

**Township of Upper
Cape May County**

**Housing Element of the Master Plan
Fair Share Plan**

Adopted by the Planning Board on June 30, 2025, by Resolution PB SP 06-2025
Endorsed by the Governing Body on ----- by Resolution -----

June 20, 2025

Township of Upper
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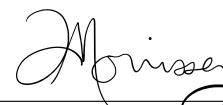
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EXECUTIVE SUMMARY

The Township of Upper has prepared this plan in response to the enactment of Assembly Bill 4 signed by the Governor in 2024. This legislation abolished the Council on Affordable Housing (COAH), the State agency responsible for administering and overseeing affordable housing plans. The legislation also amended affordable housing regulations as provided for in the Fair Housing Act (FHA) and set deadlines for municipalities for reporting and filing a Fourth-Round Housing Element and Fair Share Plan.

In accordance with the amendments to the FHA, Upper Township accepted the Department of Community Affairs' (DCA) calculations of the Municipality's Present Need and Prospective Need in a binding resolution 49-2025 on January 27, 2025 and filed the resolution with the Affordable Housing Dispute Resolution Program ("the Program") through a Complaint for Declaratory Relief in accordance with the Administrative Office of the Courts' Directive #14-24 ("AOC Directive #14-24). On March 27, 2025, the Court issued an Order fixing Municipal Obligations for Present Need and Prospective Need for the Fourth Round Housing Cycle for the municipality consistent with the DCA calculations: Present Need of 0 and Prospective Need as 47.

This plan provides for the Municipality's Fourth-Round affordable housing obligation as calculated by the DCA and fixed by the Courts.

The Township received a durational adjustment in their Court-approved Third-Round plan which provided for 111 credits from existing developments and a durationally adjusted 444 credits from proposed developments subject to the extension of sewer infrastructure.

The Township has actively pursued affordable housing opportunities through partnerships with Habitat for Humanity and by creating market to affordable units.

Realizing that there may be additional opportunities to capture new affordable housing units, the Township adopted a mandatory set-aside ordinance in 2024. The Township is also advancing redevelopment projects which include affordable housing components to address their combined affordable housing obligations.

This plan includes a new proposal to create an inclusionary housing redevelopment project with up to 154 affordable units, of which 80 will be family units and 74 will be age-restricted units. The Township proposes to amend parts of the Court-approved Third Round plan to address new developments that have been completed or proposed.

Over the years the regulations pertaining to each Round of Affordable Housing obligations have changed. In preparing the Fourth-Round components of the Fair Share Plan, the FHA as amended (N.J.S.A. 52:27D-310, et seq.), was followed. This Plan also follows the requirements of N.J.A.C. 5:93. where appropriate, as called for by the recent FHA amendments.

INTRODUCTION

The Township of Upper is located in Cape May County, consisting of 68.68 square miles. The Township was incorporated in 1798 and over the years has reduced in area to allow for the creation of Dennis Township, Ocean City and Sea Isle City. The Township is partially located within the Pinelands National Reserve and is subject to the Pinelands Comprehensive Management Plan (CMP.) The Township includes various villages that have developed over the years and the shore community of Strathmere is also part of the Township.

The Township has worked diligently to create appropriate development areas and planning designations by participating in the NJ Plan Endorsement process, initially in 2007, updating the plan again in 2019 which was approved in 2022. The Township believes smart growth and smart planning are the framework for ensuring that future development patterns are respectful of the Township's environmentally vulnerable areas. The creation of designated centers allows the Township to effectively plan for future development and conservation efforts. The core development areas in the Township are along Route 9, where the Township's designated town centers are located. Route 9 extends from the former Beasley's Point Bridge to the Township's border with Dennis Township.

Upper Township prepared and adopted a Third-Round Housing Element and Fair Share Plan on December 18, 2008, consistent with the then-operative Round Three growth share rules. The Supreme Court invalidated the third-round of the regulations adopted by the New Jersey Council on Affordable Housing ("COAH") on September 26, 2013 in In re Adoption of N.J.A.C. 5:96 & 5:97 by NJ Council on Affordable Housing, 215 N.J. 578 (2013), this Affordable Housing Plan comports with COAH's rules at N.J.A.C. 5:91 et seq. and N.J.A.C. 5:93 et seq., and subsequent applicable laws and regulations such as amendments to the FHA. As a result of the

foregoing, the Township's 2008 Housing Plan and Fair Share Plan was never certified by COAH.

On July 2, 2015 the Township of Upper filed an Application for Declaratory Judgment seeking Temporary Immunity from Mount Laurel Lawsuits. The Superior Court of New Jersey Law Division Cape May County (Docket No. CPM-L-303-15) granted the Township Temporary Immunity provided the Township file a Housing Element and Fair Share Plan addressing their future affordable housing obligation. The Township entered into a settlement agreement with FSHC on February 12, 2018 which provided for the Township's Third Round Prospective Need running from 1999 through 2025 as 233 units. The settlement agreement provided for a durationally adjusted obligation of 207 units from the Prior Round and the full 233-unit obligation from the Third-Round due to a lack of water and sewer capacity in the Township. The settlement agreement included an additional 110 credits for the Prior Round components as well as proposed mechanisms to meet the durationally adjusted obligation of 440. That settlement agreement was approved by the Court on April 23, 2018 after a duly-noticed Fairness Hearing held on April 10, 2018.

Consistent with the settlement agreement, the Township adopted a Housing Element and Fair Share Plan on August 8, 2018. The Plan included the Mount Laurel compliance techniques through which the municipality would satisfy its Prior Round and Third-Round obligations. The 2018 Plan included a number of ancillary documents, including a Spending Plan that (1) accounts for the funds to be deposited through 2025, into the Township's Mount Laurel Trust Fund; and (2) demonstrates the manner in which the Township intends to expend the funds to advance the interests of the region's low- and moderate-income households. The Court approved the Township's Third Round HEFSP and entered a Judgment of Compliance and Repose for the Township on August 28, 2018, subject to conditions. The Court

granted a Final Judgment of Compliance and Repose on June 30, 2020, noting all conditions have been met and granted the Township Immunity through July 2, 2025.

In accordance with the amendments to the FHA, the Township accepted the Department of Community Affairs' (DCA) calculations of the Township's Present Need and Prospective Need in a binding resolution 49-2025 on January 27, 2025 and filed the resolution with the Affordable Housing Dispute Resolution Program ("the Program") through a Complaint for Declaratory Relief in accordance with the Administrative Office of the Courts' Directive #14-24 ("AOC Directive #14-24). On March 27, 2025, the Court issued an Order fixing Municipal Obligations for Present Need and Prospective Need for the Fourth Round Housing Cycle for the Township consistent with the DCA calculations: Present Need of 0 and Prospective Need as 47.

This Plan amends the 2018 Plan to address approved affordable housing developments, and provides new mechanisms to satisfy the Township's cumulative affordable housing obligations.

AFFORDABLE HOUSING HISTORY IN NEW JERSEY

Affordable Housing has been embedded in New Jersey land use regulations and policy since the 1975 New Jersey Supreme Court decision, *Southern Burlington NAACP v Mount Laurel Township*, known as “Mount Laurel I.” Following a challenge to Mount Laurel’s zoning the New Jersey Supreme Court ruled that developing municipalities have a constitutional obligation to provide a variety and choice of housing types affordable to low- and moderate-income households. This decision formed the foundation of affordable housing planning and regulations in the State.

In 1983 New Jersey Supreme Court in *Southern Burlington County NAACP v. Mount Laurel Township*, 92 N.J. 158 (1983) or “Mount Laurel II” extended the constitutional obligation to all municipalities within a “growth area” as designated in the State Development Guide Plan. This decision also created an opportunity for builders to challenge municipal ordinances, in certain circumstances, for the right to build affordable housing on land that was not zoned to permit the use or density. This is what was termed a “Builder’s Remedy” for municipalities that did not provide for their constitutional obligation of affordable housing.

In response to Mount Laurel II, the State adopted the New Jersey Fair Housing Act in 1985 which created the Council on Affordable Housing (“COAH”) as an administrative alternative to litigation. COAH was charged with promulgating regulations to establish housing regions, estimate the state’s low- and moderate-income needs, and set criteria for municipal compliance through adopted housing elements and fair share plans.

COAH established a municipality’s first round affordable housing obligation for a period of six-years, from 1987 to 1993. The rules established by COAH created both a rehabilitation (present need) obligation and a new construction (prospective need) obligation. In 1994, COAH adopted new regulations to address the second

round obligation for the period 1993 to 1999. These regulations also recalculated a portion of the municipal's first round obligation, creating a cumulative obligation from 1987 to 1999, and what is now called the "Prior Round" Obligation.

In 2004 COAH adopted rules and regulations for the Third Round, which defined the round from 1999 to 2014. These regulations changed the way in which COAH calculated a municipality's affordable housing obligation, moving from an absolute number based on available data to what the new regulations termed a "growth share" approach that linked affordable housing obligations to the construction of both residential and non-residential development in the municipality over the third round time period. This was short lived as the New Jersey Appellate Division invalidated key elements of these rules, including the growth share approach to calculating affordable housing obligations, In re Adoption of N.J.A.C. 5:94 and 5:95, 390 N.J. Super 1 (App. Div. 2007). The Court ordered COAH to adopt new rules, which was completed in 2008. The new regulations maintained in large part the growth share approach and extended the third round from 2014 to 2018.

The 2008 regulations were challenged and in 2010 the Appellate Division, In re Adoption of N.J.A.C. 5:96 and 5:97, 416 N.J. Super. 462, upheld the COAH Prior Round regulations which assigned rehabilitation obligations. However, the Appellate Division invalidated the regulations pertaining to growth share and directed COAH to use similar methods that were set in the First and Second rounds. This decision was reviewed and upheld by the New Jersey Supreme Court in September of 2013 and ordered that COAH adopt new regulations on or before October 22, 2014. COAH failed to adopt the new regulations, and Fair Share Housing Center (FSHC) filed a motion in aid of litigant's rights with the New Jersey Supreme Court. The New Jersey Supreme Court issued a ruling on March 10, 2015, known as "Mount Laurel IV," which set the framework for the Third-Round affordable housing plans.

Mount Laurel IV transferred the responsibility to review and approve housing elements and fair share plans from COAH to designated Mount Laurel trial judges. This meant that municipalities would need to apply to the Courts if they wish to be protected from exclusionary zoning lawsuits. A shortfall in this decision remained as to how a municipal's affordable obligation would be calculated and left that to the trial courts, with the direction that the obligations be determined in a methodology which was similar to those used in the First and Second Round rules. The decision also directed municipalities to rely on COAH's Second Round rules at N.J.A.C. 5:93 as well as the Fair Housing Act (N.J.S.A. 52:27D-301 et seq) in preparing Third Round Housing Elements and Fair Share Plans.

FSHC was permitted to serve as an interested party in every municipal Declaratory Judgement Action. In determining an affordable housing obligation, FSHC calculated municipal affordable housing obligations, as did an expert for municipalities, and offered to settle with municipalities. Many municipalities entered into Court approved Settlements with FSHC, those that did not challenged the methodology used by FSHC to determine municipal obligations.

The Third Round, which began with COAH's 2004 rules identified the time period of 1999 to 2014. However, with COAH's stalemate in adopting regulations and the associated court challenges all cumulating past the initial third round period into the 2015 "Mount Laurel IV" decision, the third round was now identified as the period 2015 to 2025. This left a "Gap Period" of 1999 to 2015. In 2017 the New Jersey Supreme Court, In Re Declaratory Judgment Actions Filed By Various Municipalities, 227 N.J. 508 (2017), found that the "gap period," defined as 1999-2015, generates an affordable housing obligation. This obligation expanded the definition of the municipal Present Need obligation to include low- and moderate- income households formed during the gap period as a component of the new-construction obligation rather than the rehabilitation obligation.

In 2018 an unpublished decision of the NJ Superior Court, Law Division, Mercer County was rendered In re Application of Municipality of Princeton, also known as the “Jacobson Decision” which established a methodology for calculating municipal obligations in the Third Round under the Mount Laurel Doctrine. Although this decision is specific to Mercer County, Mount Laurel judges throughout the State have relied upon the Court’s decision in calculating Third Round affordable housing obligations¹. The decision came after many municipalities had entered into settlement agreements with FSHC which established a municipality’s affordable housing obligation.

While the Courts were addressing affordable housing policy and regulations, the State of New Jersey adopted two important pieces of legislation which shaped affordable housing policy. In 2008, Governor Corzine signed P.L. 2008. C.46 (referred to as “A500”, or the “Roberts Bill”) which amended the FHA. Key components of this bill include:

- Eliminating Regional Contribution Agreements (“RCA”) which allowed a municipality to transfer a portion of their affordable housing obligation to an identified receiving municipality.
- Establishing a statewide 2.5% nonresidential development fee instead of requiring nonresidential developers to provide affordable housing
- Created a very low-income affordable housing category and required at least 13% of all affordable housing units be restricted as very low-income housing units
- Required municipalities to commit to spend all collected development fees for affordable housing within four years of the date of collection.

¹ The Jacobson decision is also referred to in the 2024 FHA amendments providing that the decision “shall be referenced as to datasets and methodologies that are not explicitly addressed” in N.J.S.A. 52:27D-304.3 of the FHA.

The second piece of legislation was adopted in 2024. Governor Murphy signed P.L. 2024, c.2 (referred to as “A4”) which further amended the FHA and abolished COAH, transferring the oversight of a municipality’s Mount Laurel compliance to the courts. The legislation called for the establishment of “the Program” within the courts, which is an Affordable Housing Dispute Resolution Program meant to assist municipalities and interested parties in resolving their disputes prior to further litigation. Additional key components of the Act include:

- Giving responsibility to the DCA to provide non-binding calculations of municipal present and prospective need using the standards as provided for in the legislation
- Establishing monitoring deadlines for all affordable units and trust funds
- Establishing mechanisms and bonuses for a municipality to meet its affordable housing obligation
- Establishing the Fourth Round of affordable housing obligations from 2025 through 2035
- Establishing a deadline of June 30, 2025, for a municipality to file a Housing Element and Fair Share Plan in compliance with the new regulations to remain protected from an exclusionary zoning lawsuit.

HOUSING ELEMENT

The 2024 amendments to the Fair Housing Act included changes to what a Housing Element is required to address. The following is required to be part of any newly adopted Housing Element pursuant to N.J.S.A. 52:27D-310-10:

- An inventory of the municipality's housing stock by age, condition, purchase or rental value, occupancy characteristics, and type, including the number of units affordable to low- and moderate-income households and substandard housing capable of being rehabilitated;
- A projection of the municipality's housing stock, including the probable future construction of low- and moderate-income housing, for the next ten years, taking into account, but not necessarily limited to, construction permits issued, approvals of applications for development, and probable residential development trends;
- An analysis of the municipality's demographic characteristics, including, but not necessarily limited to, household size, income level, and age;
- An analysis of the existing and probable future employment characteristics of the municipality;
- A determination of the municipality's present and prospective fair share of low- and moderate-income housing and its capacity to accommodate its present and prospective housing needs, including its fair share of low and moderate income housing;
- A consideration of the lands most appropriate for construction of low- and moderate-income housing and of the existing structures most appropriate for conversion to, or rehabilitation for, low and moderate income housing, including a consideration of lands of developers who have expressed a commitment to provide low and moderate income housing;

- An analysis of the extent to which municipal ordinances and other local factors advance or detract from the goal of preserving multigenerational family continuity as expressed in the recommendations of the Multigenerational Family Housing Continuity Commission;
- An analysis of consistency with the State Development and Redevelopment Plan, including water, wastewater, stormwater, and multi-modal transportation based on guidance and technical assistance from the State Planning Commission.

The following sections of this report addresses each of the above referenced requirements.

A Note on the Data: The following statistics and demographic data are derived from one of the following sources.

2023 American Community Survey 5-year Estimates: *The most up to date information is the American Community Survey (ACS) estimates, which are generated between the decennial censuses. ACS figures are based on data collected over a 5-year period.*

2020, 2010, 2000 and 1990 Census: *The 2020 Census is the most recent decennial census. This information is used when ACS information is unavailable, and sometimes for comparison.*

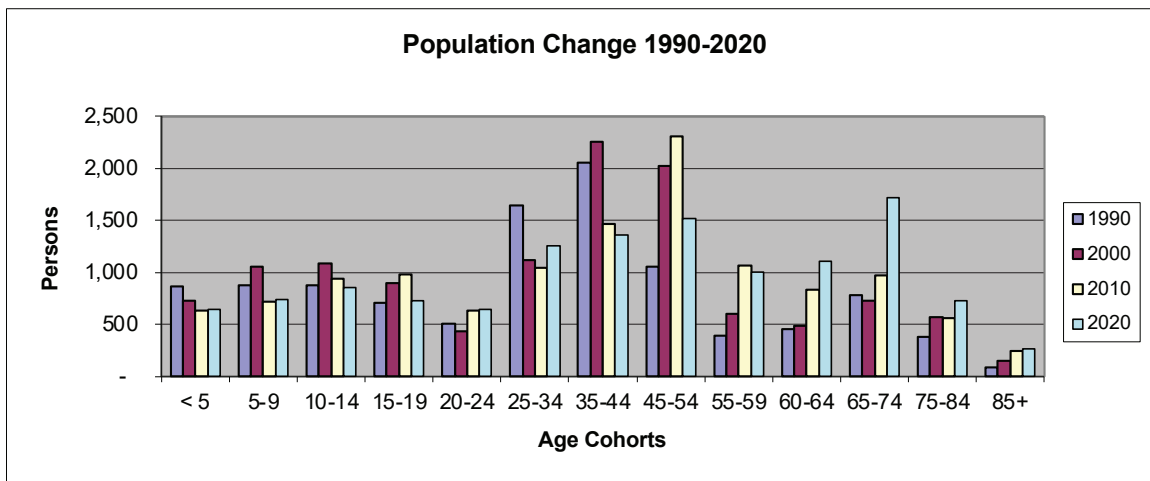
NJ Building Permit Data: *NJ reports building permits and certificates of occupancy issued for each municipality on a monthly basis.*

Demographic Analysis

The Township of Upper has seen a population increase over the past thirty years, with the largest increase in the 30-year period occurring from 1990 through 2000. Over the 30-year period the population increased by 1,858 persons. The Township's population has generally remained steady since 2000 with only a 424 person increase in the period after the higher population growth. The Township saw considerable growth in the 80's and 90's. The ACS 5 Year Estimate which provides a population of 12,559 persons, which is consistent with the 2020 census reports.

Population Trends			
	Upper Township	Cape May County	New Jersey
1970	3,413	59,554	7,171,112
1980	6,713	82,266	7,365,011
1990	10,681	95,089	7,730,188
2000	12,115	102,326	8,414,350
2010	12,373	97,265	8,791,894
2020	12,539	95,263	9,288,994
1970 to 1980	96.7%	38.1%	2.7%
1980 to 1990	59.1%	15.6%	5.0%
1990 to 2000	13.4%	7.6%	8.9%
2000 to 2010	2.1%	-4.9%	4.5%
2010 to 2020	1.3%	-4.9%	4.5%

To see how the population has grown in terms of age it is helpful to look at both the changes over time to the different age-cohorts and the changes to the total housing units. We can see that there was a considerable increase in the 65-7 age cohort from 2010 to 2020. There is also a considerable decline in the 45-54 cohort from 2010 to 2020. Overall the young adult population has seen the most change with declines from the 1990's into the 2020's. The Township's median age has also increased from 34.4 years in 1990 to 45.5 years in 2020.

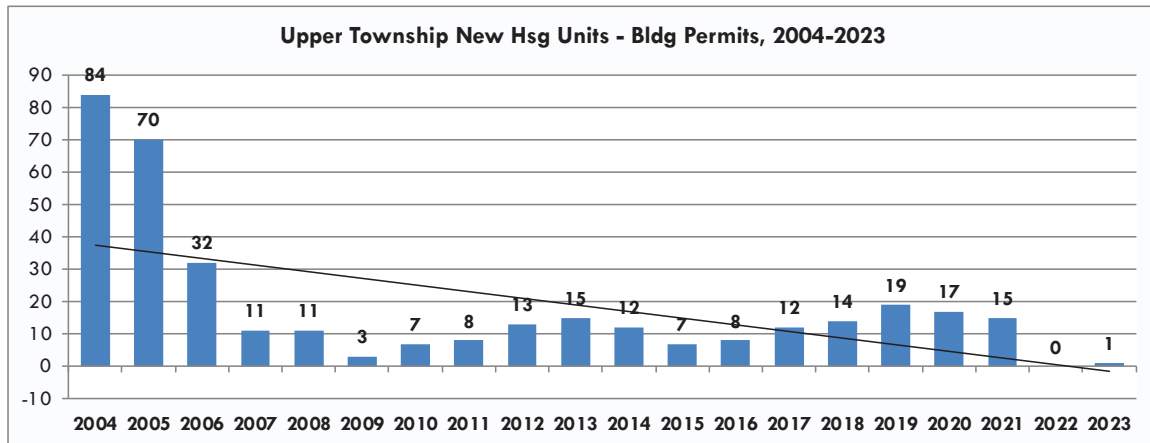


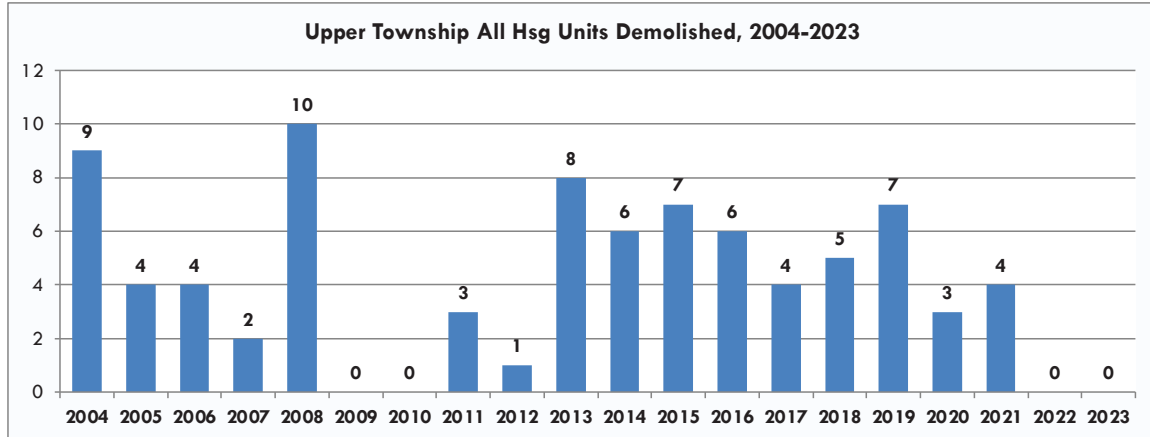
1990 - 2020 Population Profiles or Cohorts -								
	Population							
	Persons				Population Change			
Age	1990	2000	2010	2020	1990 to 2000	2000 to 2010	2010 to 2020	1990 to 2020
< 5	868	724	636	648	-16.6%	-12.2%	1.9%	-25.3%
5-9	872	1,053	715	733	20.8%	-32.1%	2.5%	-15.9%
10-14	879	1,083	937	854	23.2%	-13.5%	-8.9%	-2.8%
15-19	703	895	978	728	27.3%	9.3%	-25.6%	3.6%
20-24	504	432	635	638	-14.3%	47.0%	0.5%	26.6%
25-34	1,645	1,114	1,042	1,253	-32.3%	-6.5%	20.2%	-23.8%
35-44	2,056	2,253	1,463	1,356	9.6%	-35.1%	-7.3%	-34.0%
45-54	1,058	2,021	2,303	1,519	91.0%	14.0%	-34.0%	43.6%
55-59	393	602	1,063	998	53.2%	76.6%	-6.1%	153.9%
60-64	457	484	835	1,106	5.9%	72.5%	32.5%	142.0%
65-74	776	730	965	1,718	-5.9%	32.2%	78.0%	121.4%
75-84	380	573	562	725	50.8%	-1.9%	29.0%	90.8%
85+	90	151	239	263	67.8%	58.3%	10.0%	192.2%
18+	7,621	8,654	9,426	9,811	13.6%	8.9%	4.1%	23.7%
62+	1,542	1,731	2,229	3,369	12.3%	28.8%	51.1%	44.6%
65+	1,246	1,454	1,766	2,706	16.7%	21.5%	53.2%	41.7%
Median Age	34.4	39.1	43.6	45.5	13.7%	11.5%	4.4%	26.7%
Source: US Census Data								

From 2000 through 2010 the Township saw an 16% increase in total housing units, or a growth of 869 units. From 2010 to 2020 the Township saw a lower population increase and a 5% decline in housing units. The ACS 5 year estimates show a regrowth of housing units, reporting 6,529, or 499 new housing units since the 2020 Census.

Housing Trends			
	Housing Units		
	Upper Township	Cape May County	New Jersey
1990	5,285	85,537	3,075,310
2000	5,472	91,047	3,310,275
2010	6,341	98,309	3,553,562
2020	6,030	99,606	3,761,229
1990 to 2000	3.5%	6.4%	7.6%
2000 to 2010	15.9%	8.0%	7.3%
2010 to 2020	-4.9%	1.3%	5.8%
1990 to 2020	14.1%	16.4%	22.3%

The State of New Jersey compiles reports of building permits issued for residential purposes between 2004 through 2023. The State data does not support the ACS estimates of 499 new housing units since 2020, with only 33 new housing units reported. The tables below are sourced from the DCA Residential Development Viewer shows the total building permits and demolition permits issued for housing units in the Township from 2004 through 2023.





Population by Categories						
	Upper Township		Cape May County		New Jersey	
	Persons	%	Persons	%	Persons	%
Total	12,539	100%	95,263	100%	9,288,994	100%
Sex						
F	6,482	51.7%	49,315	51.8%	4,770,289	51.5%
M	6,057	48.3%	45,948	48.2%	4,518,705	48.5%
Race						
White	11,646	92.9%	81,536	85.6%	5,112,280	72.6%
Black or African American	91	0.7%	3,567	3.7%	1,219,770	13.6%
Asian	87	0.7%	908	1.0%	950,090	5.7%
American Indian and Alaska Native	24	0.2%	253	0.3%	51,186	5.6%
Native Hawaiian and Other Pacific Islander	7	0.1%	28	0.03%	3,533	5.6%
Other	126	1.0%	3,296	3.5%	1,048,641	2.5%
Two or More Races	558	4.5%	5,675	6.0%	903,494	2.5%
Hispanic or Latino	375	3.0%	7,465	7.8%	2,002,575	13.3%
Age						
25-64	6,232	49.7%	46,110	48.4%	4,927,277	53.9%
65+	1,460	11.6%	26,622	27.9%	1,531,299	13.2%
Median Age	45.5	n/a	51.5	n/a	39.9	n/a

Housing Analysis

The most recent data available from the ACS 5 year estimates reflects the total year-round housing units of 6,529, 500 units more than what was reported in the 2020 Census. The City housing stock is primarily owner-occupied at 90% and 10% are rental units. More than half, or 59% of all households are married couples and 23% are single-female households. The median housing value is \$383,200 and the median gross rent is \$1,757.

Upper Township Housing Units by Tenant and Occupancy Status						
Year Round Housing Units			Owner-occupied		Rental	
Occupied	Vacant	Total	No.	%	No.	%
4,818	1212	6,030	4,323	89.7%	495	10.3%
Source 2020 US Census Data						

Summary of Household Characteristics - Upper Township		
	No. of Persons	% of Total
Total Population	12,539	
In Households	12,531	99.94%
In Group Quarters	8	0.06%
Institutionalized	0	0.00%
Non-Institutionalized	8	0.06%
Total Households	4,818	
Married Couple	2,884	59.86%
Cohabiting Couple	225	4.67%
Single Male	626	12.99%
Single Female	1083	22.48%
Source: 2020 US Census Data		

Selected Housing or Housing Related Characteristics					
	Median Value Housing (owner-occupied)	Median Gross Rent	Median Household Income	Value Income Ratio	Rental Vacancy Rate
Upper Township	\$383,200	\$1,757	\$109,592	3.50	0.0%
Cape May County	\$395,000	\$1,345	\$88,046	4.49	29.3%
Source: ACS 2023 5-year estimates					

Just under 80% of the Township's housing stock is single-family detached units, and almost 14% are mobile homes. Over 49% of the housing stock was built between 1970 to 1989. In general, the housing stock has a median room count of 6.9 per unit and over 71% have 3 or more bedrooms per unit.

Housing Units by Number of Units in Structure, Upper Township		
Number of Units	Units	Percent of Total
1-unit, Detached	5,213	79.84%
1-unit, Attached	206	3.16%
2 units	182	2.79%
3 or 4 units	37	0.57%
5 to 9 units	-	0.00%
10 to 19 units	-	0.00%
20 or more units	-	0.00%
Mobile Home	891	13.65%
Other	-	0.00%
Total	6,529	
Source: ACS 2023 5-year estimates		

Upper Township - Housing Units by Age		
Year Built	Units	Percent of Total
2020 or later	43	0.66%
2010 to 2019	223	3.42%
2000 to 2009	606	9.28%
1990 to 1999	945	14.47%
1980 to 1989	1,866	28.58%
1970 to 1979	1,339	20.51%
1960 to 1969	534	8.18%
1950 to 1959	207	3.17%
1940 to 1949	95	1.46%
1939 or earlier	671	10.28%
Total	6,529	
Source: ACS 2023 5-year estimates		

Occupied Housing Units by Number of Rooms - Upper Township		
Rooms	Housing Units	Percent of Total Housing Units
1	37	0.6%
2	-	0.0%
3	459	7.0%
4	449	6.9%
5	850	13.0%
6	1,072	16.4%
7	1,134	17.4%
8	1,079	16.5%
9+	1,449	22.2%
Total	6,529	100.0%
Median Rooms	6.9	
Source: ACS 2023 5-year estimates		

Occupied Housing Units by Number of Bedrooms Upper Township		
Bedrooms	Housing Units	Percent of Total Housing Units
No Bedrooms	37	0.6%
1-Bedroom	297	4.5%
2-Bedrooms	1,523	23.3%
3- Bedrooms	2,601	39.8%
4-Bedrooms	1,727	26.5%
5 + Bedrooms	344	5.3%
Total	6,529	100.0%
Source: ACS 2023 5-year estimates		

Estimated housing values show an estimated 12% of all housing units have values less than \$200,000, which would provide an opportunity for low- and moderate- income families. According to ACS 5 year estimates of the 5,195 occupied housing units in Upper Township, no units lack complete kitchen or plumbing facilities, and 10 units are heated using wood sources. Units are not considered overcrowded, with no unit having more than 1.51 occupants per room.

Housing Value, Owner Occupied Units - Upper Township		
Value	Housing Units	Percent of Total Housing Units
Less than \$50,000	273	5.6%
\$50,000 to \$99,999	82	1.7%
\$100,000 to \$149,999	39	0.8%
\$150,000 to \$199,999	204	4.2%
\$200,000 to \$299,999	903	18.4%
\$300,000 to \$499,999	2,358	48.2%
\$500,000 to \$999,999	976	19.9%
\$1,000,000 or more	60	1.2%
Total	4,895	100.0%
Median Housing Value	\$ 383,200	
Source: ACS 2023 5-year estimates		

Income and Employment Analysis

The median household income in the Township is \$109,592, and the median family income is \$129,688. The poverty rate in the Township is 2.3% for all persons and 2.4% for families.

Income Levels			
	Upper Township		
	Households	Families	Non-Family
Median Income	\$109,592	\$129,688	\$70,669
Mean Income	\$129,571	\$143,469	\$79,569
Source: ACS 2023 5-year estimates			

Percent Distribution Persons and Families below Poverty Level				
	Population Below Poverty Line			Families Below Poverty Line
	All Persons	% of All Persons 18+ Years of Age	% of All Persons 65+ Years of Age	
Upper Township	2.3%	2.5%	1.9%	2.4%
Cape May County	8.7%	8.2%	4.8%	6.1%
New Jersey	9.8%	8.8%	9.5%	7.0%
Source: ACS 2023 5-year estimates				

Affordable housing units are required to be priced to be affordable to low- and moderate-income families within the specified housing region where the municipality is located. Upper Township is located within Region 6 for the purposes of determining housing affordability. Income limits for households ranging from 1 person to 5 persons range from a household income of \$20,655, for a one-person, low-income family up to an income of \$84,983, for a 5-person, moderate income household. Household income reported in the Township includes 24% of households with incomes which would fall into the affordable housing income levels.

Household Income - Percent of Total Households		
	No of Persons	% of Total
Less than \$10,000	64	1.2%
10,000 - 14,999	92	1.8%
15,000 - 24,999	124	2.4%
25,000 - 34,999	394	7.6%
35,000 - 49,999	195	3.8%
50,000 - 74,999	669	12.9%
75,000 - 99,999	686	13.2%
100,000 - 149,999	1118	21.5%
150,000 - 199,999	945	18.2%
200,000 +	908	17.5%
Total Households	5195	
Source: ACS 2023 5-year estimates		

2024 Affordable Housing Region 6 Income Limits					
	1 Person Household	2 Person Household	3 Person Household	4 Person Household	5 Person Household
Median Income	\$ 68,852	\$ 78,688	\$ 88,524	\$ 98,360	\$ 106,228
Moderate Income(80% of Median)	\$ 55,081	\$ 62,950	\$ 70,819	\$ 78,688	\$ 84,983
Low Income (50% of Median)	\$ 34,426	\$ 39,344	\$ 44,262	\$ 49,180	\$ 53,114
Very Low Income (30% of Median)	\$ 20,655	\$ 23,606	\$ 26,557	\$ 29,508	\$ 31,868
Source: Affordable Housing Professionals of NJ, April 12, 2024					

Of the population over the age of 16, 65% are in the labor force and 64% are employed. The fields of educational services, and health care/social assistance employs 31% of the population. Over 49% of the employed population work in management, business, science and arts.

UPPER TOWNSHIP EMPLOYMENT STATUS		
	Total	Percent of Population 16 Years and Over
Population 16 years and Over	10,081	100%
In Labor Force	6,536	64.83%
Civilian Labor Force	6,481	64.29%
Employed	6294	62.43%
Unemployed	187	1.85%
Armed Forces	55	0.55%
Not In Labor Force	3,482	34.54%
Source: ACS 2023 5-year estimates		

Employment by Industry, Civilian Employed population 16 years and over		
Occupation	No. Persons	% Upper
Agriculture, Forestry, Fishing and Hunting, and Mining	72	1.14%
Construction	522	8.29%
Manufacturing	391	6.21%
Wholesale Trade	112	1.78%
Retail Trade	505	8.02%
Transportation and Warehousing, Utilities	277	4.40%
Information	139	2.21%
Finance and Insurance, and Real Estate and Rental and Leasing	563	8.95%
Professional, Scientific, and Management, and Administrative and Waste Management Services	595	9.45%
Educational Services, and Health Care and Social Assistance	1,964	31.20%
Arts, Entertainment, and Recreation, and Accommodation and Food Services	573	9.10%
Other Services, except Public Administration	166	2.64%
Public Administration	415	6.59%
Total	6,294	100%
Source: ACS 2023 5-year estimates		

Employment by Occupation Civilian Employed population 16 years and over		
Occupation	No. Persons	% Upper
Management, Business, Science, and Arts	3,141	49.90%
Service	597	9.49%
Sales and Office	1,442	22.91%
Natural Resources, Construction and Maintenance	602	9.56%
Production, Transportation & Material Moving	512	8.13%
Total	6,294	100%
Source: ACS 2023 5-year estimates		

Affordable Housing Obligation

A municipality's affordable housing obligation is spread across different time periods. The most current obligation is related to the Fourth-Round. However, a municipality must also address any prior affordable housing obligations if they have not already been fully satisfied. The following reviews all components of Upper Township's affordable housing obligation beginning in 1987 and extending through 2035.

The following table identifies the Municipality's comprehensive affordable housing obligation:

Present Need/Rehab Obligation	0
Prior Round (1987-1999)	317
Round 3 Settlement (1999-2025) ²	233
Round 4 (DCA Calculations 2025-2035)	47
Total Obligation (New Units)	597

² On March 8, 2018, Judge Mary C. Jacobson issued an opinion on fair share obligations. On March 28, 2018, Econsult Solutions prepared a comprehensive calculation of the statewide obligations using the "Jacobson" method. This resulted in the Township of Upper having a Third-Round Prospective Need of 60 and a Gap Present Need of 108, for a total Third-Round obligation of 168. This is 65 units less, or 27.8% less than the obligations as per the Court-approved settlement in 2018.

Present Need / Rehabilitation Component

The Present Need/Rehabilitation obligation is determined by estimating the existing deficient housing units currently occupied by low- and moderate-income households within the municipality, through the use of datasets made available through the federal decennial census and the American Community Survey, including the Comprehensive Housing Affordability Strategy dataset thereof. This figure was calculated by the Department of Community Affairs (“DCA”) based upon its interpretation of the standards of the Amended FHA. The municipality’s rehabilitation obligation is **0**.

Prior Round Component

The Prior Round obligation is the Township’s cumulative Round 1 and 2 affordable housing obligation for the years between 1987 and 1999. The municipality’s Prior Round obligation is **317**.

Round Three Component

Pursuant to a settlement agreement dated April 30, 2018, by and between Upper Township and Fair Share Housing Center, the Township’s Third Round affordable housing obligation is **233** (per the Kinsey Report³, as adjusted by FSHC settlement agreement, including the “Gap Period” between 1999 and 2015). The Round 3 Prospective Need includes the so-called “Gap Period Present Need,” which is a measure of households formed from 1999-2015 that need affordable housing, created by the Supreme Court in In re Declaratory Judgment Actions Filed By Various Municipalities, 227 N.J. 508 (2017).

³ David N. Kinsey, PhD, PP, FAICP, NEW JERSEY LOW AND MODERATE INCOME HOUSING OBLIGATIONS FOR 1999-2025 CALCULATED USING THE NJ COAH PRIOR ROUND (1987-1999) METHODOLOGY, July 2015.

Round Four Component

The Fourth-Round affordable housing obligation extends from 2025 through 2035. This is considered the current Prospective Need, which is a projection of housing needs based on development and growth which is reasonably likely to occur in a municipality. The Fourth Round prospective need was determined pursuant to methodology adopted by the state pursuant to the Fair Housing Act as amended in 2024.

On October 18, 2024, the Department of Community Affairs (“DCA”) issued a non-binding report estimating the Fourth-Round affordable housing obligations for all municipalities based upon its interpretation of the standards of the Amended FHA. Upon review of the DCA’s report, the Township of Upper adopted a binding resolution #49-2025 on January 27, 2025, committing to the DCA Fourth Round Prospective Need (New Construction) Obligation of **47**.

Durational Adjustment

A Durational Adjustment allows for a deferral of the Township’s affordable housing obligation based on the lack of infrastructure. The Township’s Court-approved Third-Round Settlement Agreement included a Durational Adjustment due to constraints on public wastewater infrastructure. As existed in 2019, the Township continues to lack the required infrastructure to support development in the designated centers and approved sewer service areas. The Township has received Plan Endorsement under the State Plan and contains approved centers which are intended to accommodate the Township’s future development and located in approved sewer service areas. Despite being in approved centers and having an approved sewer service area, the infrastructure necessary to support development is not available.

Upper Township is subject to the Cape May County Wastewater Management Plan (WMP), which was approved in 2012. The Township has an approved wastewater management plan that permits the future construction of public sewer infrastructure or on-site package treatment plants within certain areas.

In light of this the Township's court-approved Third-Round plan divided the Fair Share Plan into two parts consistent with Prior Round regulations concerning adjustments to the fair share predicated upon a lack of sewer – known as a durational adjustment. The first addresses the existing/approved units that are able to utilize existing infrastructure and development approvals. This will provide for a total of 110 affordable housing credits.

The balance of the Township's obligation (the “deferred portion”) (440 credits) will be deferred until adequate water and/or sewer capacity becomes available. The Township of Upper will endorse all applications to the New Jersey Department of Environmental Protection (DEP) for water and/or sewer capacity to permit the development as per the listed sites and areas in this plan.

Upper Township will comply with the applicable rules regarding durational adjustments to satisfy the full affordable housing obligation. As the State has not adopted new regulations the Township will follow the standards as set forth in N.J.A.C. 5:93-4.3(c). The requirement to address the Township's full affordable housing obligation under the Prior and Third-Rounds is deferred until adequate water and/or sewer are made available. As such, the Township commits to complying with the following, which is stated in N.J.A.C. 5:93-4.3:

1. *Notwithstanding the lack of adequate water and/or sewer, the municipality shall reserve and set aside new water and/or sewer capacity, when it becomes available, for low- and moderate-income housing, on a priority basis.*

2. *Municipal officials shall endorse all applications to the DEP or its agent to provide water and/or sewer capacity.*
3. *Where the DEP or its designated agent approves a proposal to provide infrastructure to a site for the development of low- and moderate-income housing identified in the housing element, the municipality shall permit such development; and*
4. *Where a municipality has designated sites for low- and moderate-income housing that lack adequate water and/or sewer and where the DEP or its designated agent approves a proposal to provide water and/or sewer to a site other than those designated for the development of low- and moderate-income housing in the housing element, the municipality shall amend its housing element and fair share housing ordinance to permit development of such site for low- and moderate-income housing.*

The Township will endorse all applications to the New Jersey Department of Environmental Protection (DEP) for water and/or sewer capacity to permit the development as per the listed sites and areas in the Fair Share Plan.

The Township has negotiated for more units than are required for Round 4 on Beesley's Point to address part of the durationally adjusted units. In addition, the Township has moved the 100% project to make it more viable based on feedback from 100% developers. Moreover, the Township has reduced reliance on the Mamora Town Center, though it remains viable for inclusionary development and potential sewer. These efforts demonstrate that the Township's deferred mechanisms are coming to fruition through the good faith efforts of the Township. That, coupled with the Township's history of compliance and meaningful Round 4 plan – even in the absence of any immediate sewer capacity – gives the court ample justification to continue the Township's "waiver" under N.J.A.C. 5:93-4.3(c)(4) from the requirements of N.J.A.C. 5:93-4.3(c)(3) and (4).

Land Use Analysis

In accordance with N.J.S.A. 52:27D-310.f. The Township has given consideration to the lands that are most appropriate for construction of low- and moderate-income housing and of the existing structures most appropriate for conversion to, or rehabilitation for, low- and moderate-income housing, including a consideration of lands of developers who have expressed a commitment to provide low- and moderate-income housing.

Upper Township has considered additional sites which would be suitable for affordable housing purposes. The Township has worked with developers to provide affordable housing opportunities on various parcels as identified in their Third-Round Plan. The Township will continue to be proactive in identifying properties which are suited to new affordable housing developments.

The Township has been engaged in the redevelopment of the former B.L. England property, a former power plant with ancillary buildings that has been decommissioned. The reuse of this property for new development embodies the elements of smart growth and good planning. This property is within a State Planning area designated for development and is subject to a State approved redevelopment designation. Recognizing this site as a viable development opportunity the Township has negotiated for more units than are required for Round 4 on Beesley's Point property to address part of the durationally adjusted units in the third round plan.

In addition, the Township has moved the 100% Stagecoach Road project to make it more viable based on feedback from 100% developers. The new site has been declared an area in need of rehabilitation and a Redevelopment Plan will be prepared to provide for the full site development in cooperation with a 100% affordable housing developer.

The Township has received developer interest for property within the Marmora Town Center zone, which is part of the third-round compliance mechanisms as approved by the Courts in the Townships 2018 JOR. The Township is working with the new property owner of the former Verizon property to develop a plan that meets the Marmora Town Center zoning. The site does not have access to public sewer infrastructure and will require the use of a package treatment plant which limits the developable area of the property.

The Township has many constraints when it comes to new development, including the lack of public sewer infrastructure. Over 76% of the Township's land area is considered conservation of forest or marshland. Although the Township has State Planning areas that permit and encourage development, the majority of the Township is within a State Planning Area 5 – environmentally sensitive or protected under the Pinelands Comprehensive Management Plan. Given these constraints the Township believes that the sites identified in the HEFSP are the best suited areas to zone for future affordable housing developments.

Consistent with smart growth principles, the Township has chosen to intersperse affordable housing throughout existing residential neighborhoods in the Township. The Township has analyzed all available compliance techniques including whether inclusionary zoning and the development of 100% affordable housing sites would best serve the Township to address its fair share obligation. The Township has determined that a combination of these types of development would be appropriate to satisfy the Township's fair share obligation.

The Township has completed considerable planning reports including those necessary to received Plan Endorsement from the State Planning Commission in 2007 and re-approved again in 2021. These reports have formed the basis for the

Township's planning and development regulations. The Township has identified properties for affordable housing development with a balance of residential to non-residential land uses. The sites included in this plan were identified as those which provided for an appropriate balance and mix of land uses while meeting and exceeding the Township's current identified affordable housing obligation (including durational adjustments to that obligation).

Multigenerational Family Housing Analysis

In 2021 the FHA was amended to require an analysis of the extent to which municipal ordinances and other local factors advance or detract from the goal of preserving multigenerational family continuity as expressed in the recommendations of the Multigenerational Family Housing Continuity Commission. Currently, there are no recommendations published from the Commission. The duties of the commission are:

"To prepare and adopt recommendations on how State government, local government, community organizations, private entities, and community members may most effectively advance the goal of enabling senior citizens to reside at the homes of their extended families, thereby preserving and enhancing multigenerational family continuity, through the modification of State and local laws and policies in the areas of housing, land use planning, parking and streetscape planning, and other relevant areas."

A review of 2020 Census data shows that 3.9% of the occupied housing units in the Township contain three plus generations of families. Upper Township is an older farming community and recognizes the needs of older residents who want to age in place or continue to live independently in the municipality where they raised their families. The Township has created opportunities for new age-restricted apartment housing with affordable

housing units. The Township ordinances do not prohibit the creation of extra living space for family members, provided they are part of the same housekeeping unit.

Regional Planning Analysis

The Township is split between the Pinelands Comprehensive Management Plan (CMP) planning areas and the New Jersey State Planning areas. Sixty-nine (33%) of the total land area in the Township is within a Pinelands Management Area. The Pinelands Areas encompass all the land area generally northwest of Dennisville-Petersburg Road and south of Routes 49 and 50. This represents the western side of the Township.

Within the Pinelands areas, 4% is designated as a Pinelands Village and 1% is designated as a Pinelands Town. The non-development areas of the Pinelands include 8% which is in a Rural Development Area and 87%, which is in a forested conservation planning area, where development is not permitted or encouraged. In the Rural areas, residential development requires a minimum lot area of one acre, provided additional land area is preserved to ensure compliance with septic dilution standards. Development within a Pinelands Village Planning Area includes permissive residential densities of one to five acre lots as these areas are not accessible to public sewer. Where sewer is available density can be increased to match the density of the surrounding areas. Development is encouraged in the Pinelands Town Planning Area with permissive residential densities ranging from two to four homes per acre where public water and sewer are available.

Land which is not within the Pinelands Management Areas are within either a Suburban State Planning Area (PA2), Rural State Planning Area (PA4) or an Environmentally Sensitive Planning Area (PA5). The Township has also gone through the State Plan Endorsement process and as such has identified and approved the Designated Villages of Petersburg and Tuckahoe along Route 50. The Township also includes the Designated Towns of Seaville and Marmor/Palermo/Beasley Point. There are additional lands under the State Plan areas identified as Planning Area (PA8) which contains lands owned by the State or Federal governments and designated as parkland. The Township received Plan Endorsement for the State Planning areas and designated centers and in February of 2022. The planning areas are as provided for in the 2024 State Development and Redevelopment Plan (SDRP) and consistent with the Township's approved Plan Endorsement.

The Office of Planning Advocacy and the State Planning Commission are currently in the process of Cross Acceptance to adopt the 2024 SDRP. This is the first update to the 2001 SDRP. In both the 2001 and 2024 SDRP the land area in the Township subject to the State Plan remains generally consistent.

The NJ SDRP recognizes the planning areas and goals of the CMP. Based on the combined State Planning areas and Pinelands Management Areas, only the Pinelands Town and Villages areas are intended for development and public sewer infrastructure.

FAIR SHARE PLAN

A Fair Share Plan (FSP) is prepared to address how a municipality intends to meet their constitutional affordable housing obligations. The FSP identifies the affordable housing obligations, projects that have been completed, proposed mechanisms to meet the affordable housing obligations, and addresses the requirements of the FHA and affordable housing regulations applicable to each set of obligations, including N.J.A.C. 5:93 and N.J.A.C. 5:80 where applicable.

Affordability Requirements

Affordable housing is defined under New Jersey's Fair Housing Act as a dwelling, either for sale or rent that is within the financial means of households of low or moderate income as income is measured within each housing region. The Township of Upper is in Region 6, which includes Atlantic, Cape May, Cumberland and Salem counties. Moderate-income households are those earning between 50% and 80% of the regional median income. Low-income households are those with annual incomes that are between 30% and 50% of the regional median income. As required by the amended FHA (Roberts bill), there is also included a very low-income category, which is defined as households earning 30% or less of the regional median income.

Through the Uniform Housing Affordability Controls (hereinafter "UHAC") at N.J.A.C. 5:80-26.3(d) and (e), which were amended on an emergent basis in December 2024, the maximum rent for a qualified unit be affordable to households that earn no more than 60% of the median income for the region. The average rent must be affordable to households earning no more than 52% of the median income. The maximum sale prices for affordable units must be affordable to households that earn

no more than 70% of the median income. The average sale price must be affordable to a household that earns no more than 55% of the median income.

The regional median income is defined using the federal Department of Housing and Urban Development (“HUD”) income limits on an annual basis. In the spring of each year HUD releases updated regional income limits. It is from these income limits that the rents and sale prices for affordable units are derived. These figures are updated annually.

Affordable Housing Plan

The following amends in part Upper Township’s approved Third Round Plan and incorporates provisions to address the Upper Township’s new Fourth-Round obligations.

Rehabilitation Obligation/Present Need:

The Township’s Present Need obligation is **0-units**. Since 2012, the Township has operated a rehabilitation program using monies from the Affordable Housing Trust fund. The program has been administered by Triad Associates. Through the rehabilitation program the Township has successfully rehabilitated 14 affordable housing units towards its Third-Round rehabilitation component. In addition, in December 2008, the Township adopted a resolution to fund any shortfall of funds required for implementing the Spending Plan (Resolution 304-2008). Under the Fourth-Round calculations the Township does not have a new rehabilitation obligation. Should the Township’s obligation increase the township will satisfy the remaining units through continuation of the rehab program.

Prior and Third Round:

As set forth above, Upper Township has addressed its Prior Round (1987-1999) obligation of **317**. Pursuant to the FSHC agreement and 2020 Final JOR referenced above, the municipality's Third Round affordable housing obligation is **233**. The Third Round Prospective Need includes the so-called "Gap Period Present Need," which is a measure of households formed from 1999-2015 that need affordable housing, created by the Supreme Court in In re Declaratory Judgment Actions Filed By Various Municipalities, 227 N.J. 508 (2017).

The Township's combined Prior and Third-Round obligation is **550**. In accordance with the Court-approved Third-Round Plan and Settlement Agreement, the Township provided for 110 credits from existing housing developments and units and an additional 444 credits from proposed projects which would go towards the Township's durationally adjusted housing obligation.

The following Table summarizes the Credits which were provided for from existing projects as approved in the Township's 2020 Final JOR and as amended herein:

Upper Township's Prior Round Plan Obligation – 257 Non-Durationally Adjusted Obligation - 110	Rental	Senior	Family	Units	Bonus Credits	Total Credits
<i>Market to Affordable</i>				5		5
2140 Route 50 (B 350, L 9)			x			
2291 Route 50 (B 348, L 25)			x			
15 Townsend Road (B 612, L 3 & 4)			x			
2 Additional Proposed			x			
<i>Inclusionary Development Credits</i>						
Heritage Acres MHP (B 639, L 15.01 & 15.02)	x		x	26	26	52
Osprey Cove/2058 South Shore Rd LLC (Route 9 and Route 50)	x		x	20	20	40
<i>100% Affordable</i>						
Habitat for Humanity 21 Ocean Avenue 41 Redwood Avenue 43 Redwood Avenue 103 E Ocean Avenue 104 E Ocean Avenue			x	5		5
Holly Berry 90 Route 50 (B 453, L 182.03)	x		x	1	1	2
<i>Special Needs Housing Credits</i>						
8 Foxborough Road	x		x	3	3	6
Total				60	50	110

In the Township's Court-approved Third-Round plan a total of 440 credits were proposed with 28 bonus credits for the durationally adjusted obligation. Since 2018 the Township has created 3 new housing units in the Marmora Town Center overlay zone. The Township also adopted a new Township-wide mandatory set-aside ordinance. Additionally, the Township is working on a proposed Redevelopment Plan for the Beasley's Point property which will provide new credits for both the Township's Third and Fourth-Round plans.

The following tables address the Township's approved components and include the new credits anticipated from the Beasley's Point Redevelopment project. This results in a total of 156 surplus credits. The tables amend in part the components of the approved plan in Upper Township's 2020 Final JOR to add new projects, but maintains all prior components:

Upper Township's Third Round Durationally Adjusted – 438	Rental	Senior	Family	Units	Bonus Credits	Total Credits
<i>100% Affordable</i>						
Stagecoach Road	x	x		79	26	105
<i>Inclusionary Development</i>						
Hidden Pond Route 9 South			x	20		20
Heritage Links 1357 Route 9 South			x	24		24
<i>Marmora Town Center</i>				<i>{295}</i>		<i>{295}</i>
Proposed Zoning (units not yet approved)			x	292		290
G2 Ventures 206 Route 9 South (Units 1 & 2)	x		x	2	2	4
Grecco 442 Route 9 South			x	1		1
Total				418	28	444

Upper Township's Third Round New Components	Rental	Senior	Family	Units	Bonus Credits	Total Credits
<i>New Component -Inclusionary</i>						
Beasley Redevelopment	x		x	48	48	96
Beasley Redevelopment		x		60		60
<i>Mandatory Set-Aside Ordinance</i>			x			varies
Total				108	48	156

Bonus credits are permitted for rental units, up to 25% of the municipality's obligation in accordance with N.J.A.C. 5:93-5.15(a). As such Upper Township is permitted to take a bonus credit for a maximum of 137 bonus credits from the prior and third round ($315 + 233 = 548$ total obligation = 137 bonus credits permitted at 25%). Additionally, in accordance with N.J.A.C. 5:93-5.14(a)1, the municipality is permitted to include up to 25% of the total Prior and Third-Round obligation as age-restricted housing units, for a maximum of 137 units.

Bonus credits are permissible for the projects which are completed and not durationally adjusted. The Township also received a bonus credit for the proposed stagecoach road senior housing project, as provided for in the Court-approved plan and settlement agreement. As such the Township was able to utilize a total of 76 bonus credits in the court-approved plan. There have been two new rental units completed and the plan proposes additional family rental units from the Beasley's Point Redevelopment Plan. Therefore, the Township is applying an additional fifty (50) bonus credits to the prior and third-round plan.

Fourth Round Prospective Need:

The Department of Community Affairs (DCA) for the State of New Jersey has calculated proposed new affordable housing obligations for each municipality for Round 4 (2025 through 2035). Upper Township's Fourth Round affordable housing obligation is **47**.

The 2024 FHA amendments increased the allowable age-restricted units to 30% of the RDP, for a maximum of **14 units**. The Township will utilize units from the Beasley's Point Redevelopment project to provide for age-restricted affordable units.

The amendments to the FHA for a Fourth-Round plan require a municipality provide 50% of actual affordable units, exclusive of any bonus credits, available to families with children. Additionally, at least 25% of actual units, exclusive of bonuses, are required to be rental units, of which of which 50% of the rental units, to be available to families with children. (N.J.S.A. 52:27D-311.l) The Township proposes to satisfy the family rental requirement through the Beasley's Point Redevelopment project.

The following table addresses Fourth-Round credits which will address the Township's Fourth-Round obligation:

Upper Township's Fourth Round Prospective Need Plan Obligation – 47	Rental	Senior	Family	Units	Bonus Credits	Total Credits
<i>Inclusionary Development</i>						
Beasley's Point Redevelopment	x	x		14	1.5	15.5
Beasley's Point Redevelopment	x		x	32		32
Total				46	1.5	47.5

Bonus credits are permitted for units in the Fourth Round. With an obligation of 47, the Township may utilize 12 bonus credits. In accordance with the amended FHA under N.J.S.A. 52:27D-311.k(4) the Township is utilizing 1.5 bonus credits from the proposed age-restricted units in the Beasley's Point Redevelopment Area. The regulations permit one-half bonus credit for age-restricted housing up to 10% of the age-restricted housing units. As 14 units are proposed, 1.5 credits would be the maximum bonus credits permitted for this element of the Fourth-Round plan.

The Township reserves the right to apply bonus credits in the future if they become available.

Unfulfilled Prior Round (1987 through 2025)

The mechanisms identified in Upper Township's Court-approved FSP plan included several components which were not completed. These mechanisms are discussed below.

Heritage Acres - 52 Credits

Heritage Acres Mobile Home Park, LLC (John T. Shaw Farm) received preliminary site plan approval on April 21, 2013 (Resolution PB-01-13) for the development of a 133 age-restricted mobile home park on a 46.75-acre parcel of land on Tuckahoe Road (block 639 lots 15.01 and 15.02). The total number of units proposed is 133 with a 20% affordable rental component. The affordable units will not be age-restricted and will provide a total 26 affordable family rental units. This project will be eligible for rental bonus credits.

The Township adopted an amendment to the zoning code for mobile home parks in 2007 by Ordinance #009-2007 which requires any new mobile home park to provide a 20% set-aside for affordable housing. This district applies to the Heritage Acres mobile home park as approved by the Planning Board. All affordable units are required to be family rental units under the ordinance.

2025 Update -

Although this site has not developed in accordance with the land use approvals, the Township maintains the zoning in effect which permits the proposed development and requires a 20% affordable housing set-aside. The Township maintains that this property continues to provide a realistic opportunity for affordable housing development. The site requires the creation of a package

treatment plant to provide for the development and is located within the State Planning area PA2 and within an identified sewer service area, allowing for the package treatment plant. The site is suitable for development with frontage along Tuckahoe Road and is surrounded by residential development.

Hidden Pond – 20 credits

Hidden Pond received a use variance approval from the Zoning Board by Resolution 09-05 for the creation of a 100-unit age-restricted townhouse development. The property is located at 3017 and 3023 Route 9 South in Seaville (Block 559, Lots 36.01 and 37). As a condition of approval the development was required to comply with the Township's affordable housing ordinances which require a 20% set-aside of units. The units are to be family units and may be on-site or off-site in existing residential structures. This will yield an anticipated 20 units of affordable housing. The project requires wastewater management approval as well as site plan approval.

2025 Update –

The Township maintains that this property continues to provide a realistic opportunity for affordable housing development. Hidden Ponds is located within the Township's Town Center Core which was created in 2007, after the original use variance approval, and amended in 2011, 2015 and 2018. The zoning permits residential development and requires any development of more than 5 units to provide a 20% set-aside of affordable units (new mandatory set-aside ordinance). The zoning also permits mixed use with residential and commercial. The site is within a State Planning Area PA2 with a portion of the site being within the designated center – Seaville Town Center. The property is also within a statewide sewer service area. The site is suitable for development with frontage along Route 9 and is surrounded by residential development.

Heritage Links – 24 credits

Heritage Links received a use variance approval from the Zoning Board by Resolution 25-04 for the creation of a 124-unit age-restricted development. The property is located at 1357 Route 9 South in Palermo (Block 567, Lot 50.01). As a condition of approval the development was required to comply with the Township's affordable housing ordinances which require a 20% set-aside of units. The units are to be family units and may be on-site or off-site in existing residential structures. This will yield an anticipated 24 units of affordable housing. The project approval remains valid and requires wastewater management approval as well as site plan approval. (See Resolution of Approval in Appendix)

2025 Update -

The Township maintains that this property continues to provide a realistic opportunity for affordable housing development. Heritage Links is located within the Township's Center Residential (R) zoning district, which was created in 2007, after the original use variance approval. The zoning permits adult retirement communities as a conditional use and requires any development to provide for an affordable housing set-aside. The site is within a State Planning Area PA2 with a portion of the site being within the designated center – Seaville Town Center. The developable portion of the property is also within a statewide sewer service area. The site is suitable for development with frontage along Route 9 and is surrounded by residential development.

Market to Affordable – 5 credits

Upper Township entered into a contract with TRIAD Associates, an experienced administrative agency, to administer five Market to Affordable family rental units. The funding for these units comes from the affordable housing trust fund. The Township has created three of the five market to affordable units. The Township remains in contract with TRIAD Associates and is continuing to implement the market to affordable program. The Township has ample funds in the AHTF to continue the implementation of this program and has shown success with the creation of the three units currently in the Township. The most recent unit was created in 2022 at 15 Townsend Road, copies of the approved and filed deed restrictions are in the appendix for this unit.

Marmora Town Center – 295 credits

The Township created an inclusionary zoning for the Marmora Town Center, an approved CAFRA center under the State Regulations. This area is currently zoned for a variety of residential and commercial development. The Township proposes to provide for affordable housing in the Marmora Town Center District for all new development to have a set-aside of 20%. This would yield a maximum of 295 affordable housing units. In 2018 a new Marmora Town Center District was created to provide for mixed-use development throughout the area as part of the implementation of the Housing Element and Fair Share Plan. The zoning permits a residential density of up to 12 units per acre with a requirement to include non-residential land uses as part of every development proposal at a ratio that will permit up to 1,475 residential units. There was an intent to preserve and create a Route 9 streetscape which is walkable and incorporates the village and walking atmosphere

of a downtown area. Therefore, the ordinance provides that no residential land uses shall be permitted on the first floor for any development with frontage along Route 9. All development along Route 9 should be focused on commercial with residential on the upper levels or rear of the site. This zoning was implemented in accordance with the Townships 2020 Final JOR.

2025 Update -

The Township maintains that the MTCD zoning continues to provide a realistic opportunity for affordable housing development. The Town Center zoning is a mechanism to address the Township's adjusted obligation under the Court approved durational adjustment. The Township does not have sewer infrastructure and therefore the development of units in this area has been limited. However, the Township remains committed to ensuring that any development in the MTCD creates some type of opportunity for affordable housing, even if it is not at the density permitted with sewer infrastructure.

Over the past seven years (since 2018) the Township has created three new units in the MTCD and collected development fees from various developments. The following summarizes the units approved and/or constructed since 2018 in the MTCD zoning district:

- Grecco – 442-444 Route 9 South (Block 600, Lots 45 & 46): January 2025 Board approval to include one affordable housing unit.
- G2 Ventures – 206 Route 9 South provided a total of 2 rental units created in 2023.

Stagecoach Road Senior Housing – 79 credits

The Township owns property on Stagecoach Road on block 549, lots 70, 87, 102-104. The property contains 58.64 acres and does not have access to public sewer or a centralized system. The Township designated this site aside under a durational adjustment for future affordable housing development. The site is proposed to contain up to 79 age-restricted affordable housing units plus one manager's apartment. The site has direct access through Lot 87 to Stagecoach Road, which connects to US Route 9. Lot 87 abuts a developed single-family residential area along Linda Lane and Evergreen Drive.

2025 Update -

The Township is proposing to shift the proposed affordable housing development to property across the street on lands that they acquired on June 28, 2024 (deed in appendix) from Cape May County and contains the Upper Township Senior Center. The property is known as 1369 Stagecoach Road, Block 566, Lot 1 and contains 10.17 acres of land. In September of 2024 the Township approved a Rehabilitation Designation for this property. The proposal is to maintain the senior center and construct new age-restricted affordable units in the rear of the property.

The property is located within the Township's "R2" Moderate Density Residential zoning district. The local zoning permits residential development as well as public and quasi-public uses. The property is also within the Suburban State Planning Area (PA2), an area where development is encouraged. This site is also part of a larger Sewer Service Area specifically anticipating development. The site is bordered to the southwest by single-family residential along Evergreen Drive on lots ranging in size around 0.3 acres. There are no wetlands identified on or around the subject property according to State

datasets. The site is wooded except for the area of the existing senior center building, septic and parking, utilizing an estimated 15% of the total lot area.

Elements Satisfying Obligation

Osprey Cove – 20 units

2058 South Shore Road LLC received preliminary site plan approval on April 19, 2012 (Resolution PB-02-12) and final site plan approval on January 21, 2016 for the development of a 110 unit age-restricted mobile home development on a 25-acre parcel of land with frontage on Route 9 and Route 50. The project includes 20 affordable family rental units. These units were created off-site and are currently deed-restricted and occupied.

Habitat for Humanity –5 credits

The Township is continuing to work with Habitat for Humanity to create new affordable housing units. As provided for in the Court-approved plan, the Township created a total of five (5) affordable housing units in cooperation/partnership with Habitat for Humanity. These are listed below. The Township will continue to look for opportunities to work with Habitat for Humanity as the partnership has been successful.

- 21 Ocean Avenue
- 41 Redwood Avenue
- 43 Redwood Avenue
- 103 E Ocean Avenue
- 104 E Ocean Avenue

Beasley's Point Redevelopment – up to 154 units

The Beasley's Point Redevelopment Area includes property located at Block 479, Lots 76, 76.01, 94.01, 106.02, 107, 107.01, 108, and 108.01, on the Official Tax Map of the Township. The majority of the Redevelopment Area is located on Lots 76 and 76.01 where the former B.L. England Facility and golf course operated. The Redevelopment Area is in multiple zoning districts including the Waterfront Town Center District ("WTC") District, and the Recreation and Park ("RP") District in the Township.

A redevelopment plan was adopted in January of 2021 with an amendment in 2024. The Township is currently working with the property owner to further amend the redevelopment plan to permit a resort style development with up to 768 residential units, including up to 288 age-restricted units, 400 multi-family condominium units and 80 affordable family rental units. The development will include an affordable housing set-aside of up to 20% of the total units, for up to 154 units. The final set-aside may be adjusted depending on market conditions. At a minimum the site will include 80 affordable family rental units. The additional units may be either family units or age-restricted units as part of the overall site development. A letter from the redeveloper is included in the appendix acknowledging the inclusion of the project in the Township's FSP.

Accessory Apartment ordinance

In 2016 the Township adopted Ordinance #003-2016 which created an Affordable Accessory Apartment Ordinance under Section 20-4.19 of the development regulations. A copy of this ordinance is included in the appendix for reference. No units have been created under this ordinance; however, the

opportunity remains in the Township Ordinance. This plan does not rely on any credits from the accessory apartment ordinance. However, in the event any units are created the Township reserves the right to amend the plan components to account for new units.

Mandatory Set-aside ordinance

On July 22, 2024 by Ordinance # 010-2024 the Township amended the land use ordinances to create a new mandatory set-aside for all new residential development of five or more units. This is provided for under Section 20-14.5 in the Zoning ordinance. While this is not part of the Township's Prior or Third-Round plans the Township recognized the benefit of capturing units from new developments that may not be in the Marmora Town Center and/or have access to public sewer but were able to construct more than five residential units. The set-aside requires a 20-percent and the set-aside for any development of more than five residential units. A copy of the adopted ordinance is included in the Appendix.

Very Low-Income Units

Very Low-income housing is affordable to those households with a gross household income of 30% or less of the median gross household income in the region. In 2008 the FHA was amended to include a requirement that at least 13% of all affordable housing units be very low-income units⁴. The 2024 amendments to the FHA added a provision that at least half of the very low-income units be available to families with children. The Township is required to provide 13% of their total affordable housing units in their HEFSP as very-low-income units.

⁴ Assembly Bill A-500 adopted in 2008, also known as the Roberts Bill, created a new definition for very low-income units and a requirement that 13% of all affordable units be made available to very low-income households.

Of the 34 existing units the total very low-income units required are 4. As new development is completed the Township ordinances require the units include very low-income units. Additionally, the Township will utilize AHTF to offset the costs of buying down a unit to a very low-income unit as necessary. The required very low-income units for the existing affordable units are accommodated within the existing group home. Additional units will be created in the Stagecoach Road development and Beasley's Point redevelopment project.

Phasing Plan for Affordable Housing Units⁵

The Township has unbuilt units satisfying their affordable housing obligations. The durationally adjusted units will come online when sewer is available but are not included in the phasing schedule. The Township anticipates that the identified projects below will be developed in accordance with the following schedule:

Program	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035
Stagecoach Road			79							
Beasley Redevelopment				80	20	30	24			
Market to Affordable		1	1							
Total		14	14	15	6	0	0	0	0	0

⁵ Phasing is estimated and may not reflect changes to market conditions which will impact the proposed developments.

Bonus Provisions

For the Prior Round and Third-Round plan, in accordance with N.J.A.C. 5:93-5.15, the municipality intends to take bonus credits for up to 25% their total obligation as provided for in the Court-approved Third-Round plan. The projected rental bonus would account for up to 137 credits.

Bonus credits are permitted for units in the Fourth-Round for those projects addressing the Township's obligation. With an obligation of 47, the Township is permitted to utilize 12 bonus credits under the Fourth-Round, however only 1.5 bonus credits are proposed in this plan.

The municipality reserves the right to apply additional bonus credits from units that become available as the unmet need is satisfied and they become eligible.

Affordable Housing Trust Fund

The Township of Upper adopted an affordable housing trust fund ordinance in accordance with affordable housing regulations for the purposes of funding affordable housing activities in 2009 by Ordinance #013-2009. As of May 31, 2024, the balance of the AHTF was \$1,857,276.01. A Spending Plan will be completed to provide for the expenditure of funds.

Cost Generation

Upper Township will provide for expediting the review of development applications containing affordable housing. Such expedition may consist of, but is not limited to, scheduling of pre-application conferences and special monthly public hearings for projects involving affordable housing. Furthermore, development applications containing affordable housing shall be reviewed for consistency with the

Land Development Ordinance and Residential Site Improvement Standards (N.J.A.C. 5:21-1 et seq.) The municipality shall comply with all requirements for unnecessary cost generating requirements under N.J.A.C. 5:93-10.

Monitoring

The Township of Upper shall complete all required annual monitoring reports for the municipality's Affordable Housing Trust Fund and of the affordable housing units and programs in accordance with the FHA regulations and requirements. In fact, the municipality has complied with all current AHMS reporting deadlines to date, as set forth in the Amended FHA. Upper Township's Municipal Housing Liaison has access to the AHMS and has been regularly inputting the required monitoring data as it becomes available.

Fair Share Ordinance and Affirmative Marketing

The Township of Upper in by ordinance 011-2018 and in accordance with the Township's Court approved Fair Share Plan, adopted an Affirmative Marketing and Fair Share Ordinance in accordance with N.J.A.C. 5:93 et seq., and UHAC at N.J.A.C. 5:80-26⁶. The Township's Fair Share Ordinance will govern the administration of affordable units in the Township as well as regulating the occupancy of such units. The Fair Share Ordinance covers the phasing of affordable units, the low/moderate income split, bedroom distribution, occupancy standards, affordability controls, establishing rents and sales prices, affirmative marketing, income qualification and the like. The costs of advertising and affirmative marketing of the affordable units (including the contract with the Administrative Agent) shall be the responsibility of

⁶ At this time the State is in the process of amending the UHAC regulations and adopting new affordable housing regulations under proposed N.J.A.C. 5:99 which will potentially require amendments to the Municipal Housing Ordinances and Marketing Plan. At such time that these regulations become effective the ordinances will be amended as required by law.

the developer, sponsor or owner, unless otherwise determined or agreed to by the Township.

The affirmative marketing plan is designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to the affordable units located in the Township. Additionally, the affirmative marketing plan is intended to target those potentially eligible persons who are least likely to apply for affordable units and who reside in Housing Region #6, consisting of Atlantic, Cape May, Cumberland and Salem counties.

The affirmative marketing plan includes regulations for qualification of income eligibility, price and rent restrictions, bedroom distribution, affordability control periods, and unit marketing in accordance with N.J.A.C. 5:80-26. All newly created affordable units will comply with the affordability controls required by the FHA and UHAC. This plan must be adhered to by all private, non-profit or municipal developers of affordable housing units and must cover the period of deed restriction or affordability controls on each affordable unit. The costs of implementing the affirmative marketing plan (i.e., the costs of advertising the availability of affordable units, contract with the Administrative Agent, etc.) are the responsibilities of the developers of the affordable units. This requirement will be included in the Township's fair share ordinances and shall be a condition of any municipal development approval.

Due to the HMFA's impending release of proposed amendments to UHAC in June or July 2025, the Township's Affordable Housing Ordinance will be amended and filed with the Program for review and approval once those regulations are adopted. If any changes to the Township's Court-approved Affirmative Marketing Plan, as amended to include new projects set forth in this FSP, are required, the Township

shall amend the affirmative marketing plan to include any changes, if any are required, once the new UHAC regulations are adopted.

Conclusion

Upper Township is limited to where they can allow development based on the Pinelands CMP and the need for sewer infrastructure. This constraint has resulted in the Township utilizing a Durational Adjustment in accordance with the FHA. Despite these restrictions the Township proposes to meet its affordable housing obligations through various mechanisms as demonstrated herein. The Township also recognizes there is a need to provide future opportunities for affordable housing and has provided for set-aside ordinances to capture any future development opportunities.

*APPENDIX A - Order Fixing Municipal Obligation for “Present Need” and
“Prospective Need” for the Fourth Round Housing Cycle*

APPENDIX B – 15 Townsend Recorded Deed – Market to Affordable

APPENDIX C – Senior Center Property Recorded Deed

APPENDIX D – Accessory Apartment Ordinance

APPENDIX E – Beasley’s Point Letter

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Attorneys for Declaratory Plaintiff, Township of Upper

**IN THE MATTER OF THE
 APPLICATION OF THE TOWNSHIP OF
 UPPER, COUNTY OF CAPE MAY, STATE
 OF NEW JERSEY**

**SUPERIOR COURT OF NEW JERSEY
 LAW DIVISION: CAPE MAY COUNTY**

DOCKET NO.: CPM-L-____

CIVIL ACTION
 AFFORDABLE HOUSING
 PER DIRECTIVE # 14-24

**COMPLAINT FOR DECLARATORY
 RELIEF PURSUANT TO
 DIRECTIVE# 14-24**

Declaratory Plaintiff, the Township of Upper, County of Cape May, State of New Jersey (hereinafter, “Upper” or the “Township”), a municipal corporation of the State of New Jersey, with principal offices located at P.O. Box 205, Tuckahoe, NJ 08250, by way of this Declaratory Judgment Action (“DJ Action”) as authorized under Directive # 14-24 of the Administrative Office of the Courts, alleges and says:

Background

1. The Township of Upper is a municipal corporation of the State of New Jersey.
2. The Planning Board of the Township of Upper (hereinafter, “Planning Board”) is a municipal agency created and organized under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et. seq., (“MLUL”), and, among other duties and obligations, is responsible for adopting the Housing Element and Fair Share Plan (“HEFSP”) of Upper’s Master Plan.
3. Through this DJ Action, Upper seeks the following relief in relation to its Fourth Round (2025-2035) affordable housing obligation: (a) to secure the jurisdiction of the Affordable

Housing Alternative Dispute Resolution Program (the “Program”) pursuant to P.L. 2024, c.2 (hereinafter, the “Act”) and the Court, pursuant to Directive # 14-24; (b) to have the Program and the Court approve the Township of Upper’s Present and Prospective affordable housing obligations as set forth in the binding resolution adopted by the Township, attached hereto as **Exhibit 1**; (c) to have the Program and the Court approve a HEFSP to be adopted by the Planning Board and endorsed by the Council and issue a conditional or unconditional “Compliance Certification” pursuant to the Act or other similar declaration; (d) to the extent it is not automatically granted pursuant to the Act, through the filing of this DJ Action and binding resolution, to have the Program and the Court confirm Upper’s immunity from all exclusionary zoning litigation , including builder’s remedy lawsuits, during the pendency of the process outlined in the Act and for the duration of Fourth Round, i.e., through June 30, 2035; and (e) to have the Program and the Court take such other actions and grant such other relief as may be appropriate to ensure that the Township receive and obtain all protections as afforded to it in complying with the requirements of the Act, including, without limitation, all immunities and presumptions of validity necessary to satisfy its affordable housing obligations voluntarily without having to endure the expense and burdens of unnecessary third party litigation.

COUNT I

ESTABLISHMENT OF JURISDICTION UNDER P.L.2024, C. 2

4. The Township of Upper repeats and realleges each and every allegation as set forth in the previous paragraphs of this DJ Action as if set forth herein in full.

5. The Act represents a major revision of the Fair Housing Act of 1985, N.J.S.A. 52:27D-301 *et seq.*

6. Among other things, the Act abolished the Council on Affordable Housing (hereinafter, “COAH”), and replaced it with seven retired, on recall judges designated as the

Program. Among other things, the Act authorized the Director of the Administrative Office of the Courts, (hereinafter, respectively, “Director” and “AOC”) to create a framework to process applications for a compliance certification.

7. On or about December 13, 2024, the Director issued Directive # 14-24, which among other things, required municipalities seeking compliance certification to file an action in the form of a declaratory judgment complaint and Civil Case Information Statement in the County in which the municipality is located within 48 hours after the municipality’s adoption of a binding resolution as authorized under the Act and attach a copy of said binding resolution to the DJ Action.

8. Upper adopted a binding resolution establishing its present and prospective affordable housing obligations within the statutory window of time set forth in the Act and in accordance with the methodology and formula set forth in the Act, a certified copy of which resolution is attached to this DJ Action as **Exhibit 1**.

9. Based on the foregoing, Upper has established the jurisdiction of the Program and the Court in regard to this DJ Action for a compliance certification as set forth hereinafter.

WHEREFORE, the Township of Upper seeks a declaratory judgment for the following relief:

- a. Declaring that the Township has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as set forth in the binding resolution attached as Exhibit 1 to this DJ Action or to adjust such determination consistent with the Act;
- b. Declaring the present and prospective affordable housing obligations of the Township under the Act;
- c. Declaring the approval of the Township’s HEFSP subsequent to its adoption by the Planning Board and its endorsement by the Township Council, including,

as appropriate and applicable, (i) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; (ii) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); and/or (iii) an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; (iv) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; (v) an adjustment based upon any ruling in litigation involving affordable housing obligations; and (vi) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations;

- d. Declaring that the Township continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations as established under the Program;
- e. Declaring and issuing compliance certification and immunity from exclusionary zoning litigation in accordance with the Act and Directive # 14-24 to the Township of Upper for the period beginning July 1, 2025 and ending June 30, 2035; and
- f. Declaring such other relief that the Program and Court deems just and proper within the parameters of the Act and applicable COAH regulations.

COUNT II

DETERMINATION OF THE PRESENT AND PROSPECTIVE NEED OF THE TOWNSHIP OF UPPER

10. Upper repeats and realleges each and every allegation set forth in the previous paragraphs of this DJ Action as if set forth herein in full.

11. The Act adopted the methodology to calculate every municipality's present and prospective need affordable housing obligation for the Fourth Round (2025-2035) and beyond.

The Act directed the Department of Community Affairs (“DCA”) to apply the methodology and to render a non-binding calculation of each municipality’s present and prospective affordable housing obligations to be contained in a report to be issued not later than October 20, 2024.

12. The DCA issued its report on October 18, 2024.¹

13. Pursuant to the October 18, 2024 report, the DCA calculated Upper’s present and prospective affordable housing obligations as follows:

PRESENT NEED (REHABILITATION OBLIGATION)	FOURTH ROUND PROSPECTIVE NEED OBLIGATION (2025-2035)
0	47

14. Pursuant to the Act, a municipality desiring to participate in the Program is obligated to adopt a “binding resolution” determining its present and prospective affordable housing obligations to which it will commit based upon the methodology set forth in the Act.

15. Upper adopted a binding resolution, a copy of which resolution is attached hereto and made a part hereof as **Exhibit 1** to this DJ Action.

16. The binding resolution maintains that the Present (“Rehabilitation”) Need obligation of Upper is 0 and its Prospection Need obligation is 47.

17. Upper seeks the approval of and confirmation by the Program and the Court of the Present and Prospective affordable housing obligations as set forth in the binding resolution attached hereto and made a part hereof as **Exhibit 1** or the adjustment of those obligations consistent with the Act and the applicable COAH regulations.

¹ The report may be found here: https://www.nj.gov/dca/dlps/pdf/FourthRoundCalculation_Methodology.pdf

18. Pursuant to the binding resolution, the Township of Upper reserves all rights to amend its affordable housing obligations in the event of a successful legal challenge, or legislative change, to the Act.

19. Pursuant to the binding resolution, Upper specifically reserves the right to seek and obtain 1) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; 2) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); and/or 3) an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; 4) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; 5) an adjustment based upon any ruling in litigation involving affordable housing obligations; and 6) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations.

WHEREFORE, the Township of Upper seeks a declaratory judgment for the following relief:

- a.** Declaring that the Township has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as set forth in the binding resolution attached as Exhibit 1 to this DJ Action or to adjust such determination consistent with the Act;
- b.** Declaring the present and prospective affordable housing obligations of Upper under the Act;
- c.** Declaring the approval of Upper's HEFSP subsequent to its adoption by the Planning Board and its endorsement by the Council, including, as appropriate and applicable, (i) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; (ii) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); and/or (iii) an adjustment

predicated upon regional planning entity formulas, inputs or considerations, as applicable; (iv) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; (v) an adjustment based upon any ruling in litigation involving affordable housing obligations; and (vi) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations;

- d. Declaring that the Township continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations as established under the Program;
- e. Declaring and issuing compliance certification and immunity from exclusionary zoning litigation in accordance with the Act and Directive # 14-24 to Upper for the period beginning July 1, 2025 and ending June 30, 2035; and
- f. Declaring such other relief that the Program and Court deems just and proper within the parameters of the Act and applicable COAH regulations.

COUNT III

HOUSING ELEMENT AND FAIR SHARE PLAN

20. The Township of Upper repeats and realleges each and every allegation set forth in the previous paragraphs of this DJ Action as if set forth herein in full.

21. Pursuant to the Act, a Housing Element and Fair Share Plan (hereinafter, (“HEFSP”) must be prepared adopted by the Planning Board and endorsed, by June 30, 2025.

22. Upper hereby commits for its professionals to prepare the appropriate HEFSP to address its affordable housing obligations, as determined by the Program and the Court which HEFSP shall apply as appropriate, any applicable adjustments, including, without limitation, 1) a

Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; 2) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); and/or 3) an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; 4) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; 5) an adjustment based upon any ruling in litigation involving affordable housing obligations; and 6) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations.

WHEREFORE, the Township of Upper seeks a declaratory judgment for the following relief:

- a. Declaring that Upper has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as set forth in the binding resolution attached as Exhibit 1 to this DJ Action or to adjust such determination consistent with the Act;
- b. Declaring the present and prospective affordable housing obligations of Upper under the Act;
- c. Declaring the approval of Upper's HEFSP subsequent to its adoption by the Planning Board and its endorsement by the Council, including, as appropriate and applicable, (i) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; (ii) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); and/or (iii) an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; (iv) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; (v) an adjustment based upon any ruling in litigation involving affordable housing

obligations; and (vi) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations;

- d. Declaring that the Township of Upper continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations as established under the Program;
- e. Declaring and issuing compliance certification and immunity from exclusionary zoning litigation in accordance with the Act and Directive # 14-24 to the Township of Upper for the period beginning July 1, 2025 and ending June 30, 2035; and
- f. Declaring such other relief that the program and Court deems just and proper within the parameters of the Act and applicable COAH regulations.

COUNT IV

CONFIRMATION OF IMMUNITY

23. The Township of Upper repeats and realleges each and every allegation set forth in the previous paragraphs of this declaratory judgment complaint as if set forth herein in full.

24. Pursuant to the Act, a municipality that complies with the deadlines in the Act for both determining present and prospective affordable housing obligations affordable housing obligations and for adopting an appropriate HEFSP shall have immunity from exclusionary zoning litigation.

25. The Township of Upper has met the deadline for the adoption and filing of its binding resolution (and the filing of this DJ Action in accordance with Directive # 14-24) not later than January 31, 2025 by adopting the binding resolution attached to this DJ Action as Exhibit 1, and has committed to the adoption of its HEFSP by the June 30, 2025.

26. Without waiving any judicial immunity from exclusionary zoning litigation that Upper possesses as a result of any applicable Judgment of Compliance and Repose entered in favor of the Township in Round 3, Upper has qualified for continued immunity under the Act while pursuing its certification of compliance in the instant matter.

WHEREFORE, the Township of Upper seeks a declaratory judgment for the following relief:

- a.** Declaring that the Township has established jurisdiction for the Program and the Court to confirm its present and prospective affordable housing needs as set forth in the binding resolution attached as Exhibit 1 to this DJ Action or to adjust such determination consistent with the Act;
- b.** Declaring the present and prospective affordable housing obligations of Upper under the Act;
- c.** Declaring the approval of Upper's HEFSP subsequent to its adoption by the Planning Board and its endorsement by the Council, including, as appropriate and applicable, (i) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; (ii) a Durational Adjustment (whether predicated upon lack of sanitary sewer or lack of water); and/or (iii) an adjustment predicated upon regional planning entity formulas, inputs or considerations, as applicable; (iv) an adjustment based on any future legislation that may be adopted that allows an adjustment of the affordable housing obligations; (v) an adjustment based upon any ruling in litigation involving affordable housing obligations; and (vi) any other applicable adjustment permitted in accordance with the Act and/or applicable COAH regulations;

- d. Declaring that Upper continues to have immunity from all exclusionary zoning litigation and all litigation related to its affordable housing obligations as established under the Program;
- e. Declaring and issuing compliance certification and immunity from exclusionary zoning litigation in accordance with the Act and Directive # 14-24 to Upper for the period beginning July 1, 2025 and ending June 30, 2035; and
- f. Declaring such other relief that the Program and Court deems just and proper within the parameters of the Act and applicable COAH regulations.

SURENIAN, EDWARDS, BUZAK & NOLAN LLC
Attorneys for the Declaratory Plaintiff
Township of Upper

Michael J. Edwards

By: _____
Michael J. Edwards, Esq.

Dated: January 28, 2025

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, notice is hereby given that Michael J. Edwards, Esq., attorney for the Declaratory Plaintiff, Township of Upper is designated as trial counsel in the above captioned matter.

SURENIAN, EDWARDS, BUZAK & NOLAN LLC
Attorneys for the Declaratory Plaintiff
Township of Upper

Michael J. Edwards

By: _____
Michael J. Edwards, Esq.

Dated: January 28, 2025

CERTIFICATION PURSUANT TO R. 4:5-1

Michael J. Edwards, Esq., of full age, hereby certifies as follows:

1. I am a member of the Firm of Surenian, Edwards, Buzak & Nolan LLC, attorneys for declaratory plaintiff, Township of Upper.
2. To the best of my knowledge, there is no other action pending in any court or any pending arbitration proceeding of which the matter in controversy herein is the subject and no such other action or arbitration proceeding is contemplated. To the best of my knowledge, there are no other parties who should be joined in this action.
3. The within Complaint was filed and served within the time prescribed by the Rules of Court.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

SURENIAN, EDWARDS, BUZAK & NOLAN LLC
Attorneys for the Declaratory Plaintiff
Township of Upper

Michael J. Edwards

By: _____
Michael J. Edwards, Esq.

Dated: January 28, 2025

CERTIFICATION PURSUANT TO R. 1:38-7(b)

Michael J. Edwards, Esq., of full age, hereby certifies as follows:

1. I am a member of the firm of Surenian, Edwards, Buzak & Nolan LLC, attorneys for Declaratory Plaintiff, Township of Upper.
2. I certify that confidential personal identifiers have been redacted from documents now submitted to the Court and will be redacted from all documents submitted in the future in accordance with R. 1:38-7(b).

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

SURENIAN, EDWARDS, BUZAK & NOLAN LLC
Attorneys for the Declaratory Plaintiff
Township of Upper

Michael J. Edwards

By: _____
Michael J. Edwards, Esq.

Dated: January 28, 2025

**TOWNSHIP OF UPPER
CAPE MAY COUNTY
RESOLUTION**

RESOLUTION NO. 49 - 2025

**RESOLUTION OF THE COMMITTEE OF THE TOWNSHIP OF
UPPER COMMITTING TO ROUND 4 PRESENT AND PROSPECTIVE
NEED AFFORDABLE HOUSING OBLIGATIONS**

WHEREAS, the Township has a demonstrated history of voluntary compliance as evidenced by its Round 3 record; and

WHEREAS, pursuant to In re N.J.A.C. 5:96 and 5:97, 221 N.J. 1 (2015) (Mount Laurel IV), on July 2, 2015, the Township of Upper (hereinafter "Upper" or the "Township") filed a Declaratory Judgment Complaint in Superior Court, Law Division seeking, among other things, a judicial declaration that its Housing Element and Fair Share Plan (hereinafter "Fair Share Plan"), to be amended as necessary, satisfies its "fair share" of the regional need for low and moderate income housing pursuant to the "Mount Laurel doctrine;" and

WHEREAS, that culminated in a Court-approved Housing Element and Fair Share Plan and a Final Judgment of Compliance and Repose, which precludes builder's remedy lawsuits until July 1, 2025; and

WHEREAS, on March 20, 2024, Governor Murphy signed into law P.L. 2024, c.2 (hereinafter "A4" or "Amended FHA"); and

WHEREAS, A4 calculates the size of the regional affordable housing need as follows "projected household change for a 10-year round in a region shall be estimated by establishing the household change experienced in the region between the most recent federal decennial census, and the second-most recent federal decennial census. This household change, if positive, shall be divided by 2.5 to estimate the number of low- and moderate-income homes needed to address low- and moderate-income household change in the region, and to determine the regional prospective need for a 10-year round of low- and moderate-income housing obligations..."; and

WHEREAS, this means that the regional need equates to 40% of regional household growth; and

WHEREAS, the 1985 version of the Fair Housing Act and A4 both prohibit a result that would compel a municipality to spend its own money on compliance; and

WHEREAS, the theory which permits a municipality to meet its obligations without municipal subsidy is zoning for "inclusionary zoning"; and

WHEREAS, inclusionary zoning most typically requires a 15% or 20% set aside; and

WHEREAS, it is not clear how a regional need predicated upon 40% of anticipated growth can be met with 15-20% set asides and without municipal subsidy; and

WHEREAS, this is exacerbated by the fact that certain other municipalities in the region have an allocation of 0% of the prospective need (new construction obligation), irrespective of the growth in that particular municipality; and

WHEREAS, A4 yields a statewide new construction obligation of over 8,400 affordable units per year; and

WHEREAS, this is a substantially higher annual number than was imposed by COAH in the "Prior Round" or any iteration of its Round 3 regulations; and

WHEREAS, A4 determines the size of the regional need, but does not calculate allocation of the need to individual municipalities; and

WHEREAS, instead, A4 required the Department of Community Affairs (“DCA”) to produce non-binding estimates of need on or before October 20, 2024, which it did provide on October 18, 2024 (“DCA Report”); and

WHEREAS, the DCA Report calculates the Township’s Round 4 (2025-2035) obligations as follows: a Present Need or Rehabilitation Obligation of 0 units and a Prospective Need or New Construction Obligation of 47 units; and

WHEREAS, A4 further provides that, irrespective of the DCA’s calculation, municipalities are to determine “present and prospective fair share obligation(s)...by binding resolution no later than January 31, 2025”; and

WHEREAS, this resolution satisfies the requirements of A4 by accepting the DCA estimate of need as described in the DCA Report; and

WHEREAS, Section 3 of A4 provides that: “the municipality’s determination of its fair share obligation shall have a presumption of validity, if established in accordance with sections 6 and 7” of A4; and

WHEREAS, Township’s calculation of need is entitled to a “presumption of validity” because it complies with Sections 6 and 7 of A4; and

WHEREAS, the Township specifically reserves the right to adjust those numbers based on one or any of the foregoing adjustments: 1) a windshield survey or similar survey which accounts for a higher-resolution estimate of present need; 2) a Vacant Land Adjustment predicated upon a lack of vacant, developable and suitable land; 3) a Durational Adjustment (whether predicated upon lack of sewer or lack of water); and/or 4) an adjustment predicated upon regional planning entity formulas, inputs or considerations, including, but not limited to Cape May County planning documents to include any document from the County which could affect the Township’s planning, the Pinelands or Meadowlands regulations and planning documents; and

WHEREAS, in addition to the foregoing, the Township specifically reserves all rights to revoke or amend this resolution and commitment, as may be necessary, in the event of a successful challenge to A4 in the context of the Montvale case (MER-L-1778-24), any other such action challenging A4, or any legislation adopted and signed into law by the Governor of New Jersey that alters the deadlines and/or requirements of A4; and

WHEREAS, in addition to the foregoing, the Township reserves the right to take a position that its Round 4 Present or Prospective Need Obligations are lower than described herein in the event that a third party challenges the calculations provided for in this Resolution (a reservation of all litigation rights and positions, without prejudice); and

WHEREAS, in light of the above, the Mayor and Committee finds that it is in the best interest of Township to declare its obligations in accordance with this binding resolution and in accordance with the Act and

WHEREAS, in addition to the above, the Acting Administrative Director issued Directive #14-24, dated December 13, 2024, and made the directive available later in the week that followed; and

WHEREAS, pursuant to Directive #14-24, a municipality seeking a certification of compliance with the Act shall file an action in the form of a declaratory judgment complaint “. . . within 48 hours after adoption of the municipal resolution of fair share obligations, or by February 3, 2025, whichever is sooner”; and

WHEREAS, nothing in this Resolution shall be interpreted as an acknowledgment of the legal validity of the AOC Directive and the Township reserves any and all rights and remedies in relation to the AOC Directive; and

WHEREAS, the Township seeks a certification of compliance with the Act and, therefore, directs its Affordable Housing Counsel to file a declaratory relief action within 48 hours of the adoption of this resolution; and

NOW, THEREFORE, BE IT RESOLVED on this 27th day of January, 2025 by the Committee of the Township of Upper, Cape May County, State of New Jersey, as follows:

1. All of the Whereas Clauses are incorporated into the operative clauses of this resolution.

2. The Mayor and Committee hereby commit to the DCA Round 4 Present Need Obligation of 0 units and the Round 4 Prospective Need Obligation of 47 units as described in this resolution subject to all reservations of rights, which specifically include:

a) The right to adjust the number based on a windshield survey, lack of land, sewer, water, regional planning inputs, or any combination thereof;

b) As described in the WHEREAS section, all rights to revoke or amend this resolution in the event of a successful legal challenge, or legislative change, to A4;

c) All rights to take any contrary position in the event of a third party challenge to the obligations.

3. The Township hereby directs its Affordable Housing Counsel to file a declaratory judgment complaint within 48 hours after adoption this resolution attaching this resolution.

4. The Township hereby directs its Affordable Housing Counsel to file this Resolution with the "Program" pursuant to the requirements on A4.

5. The Township hereby directs that this Resolution be published on the municipal website within forty-eight (48) hours of its passage, pursuant to A4.

6. This resolution shall take effect immediately, according to law.


CURTIS T. CORSON, JR., Mayor

JOANNE R. HERRON, Township Clerk

Resolution No. 49 -2025

Offered by: Nappen

Seconded by: Z. Palombo

Adopted: January 27, 2025

Roll Call Vote:

NAME	YES	NO	ABSTAIN	ABSENT
Casaccio	X			
Nappen	X			
S. Palombo	X			
Z. Palombo	X			
Corson	X			

CERTIFICATION

I certify that the foregoing Resolution was duly adopted by the Committee of the Township of Upper at a regular meeting held on the 27th of January, 2025, a quorum being present and voting in the majority.


Joanne R. Herron, RMC, CMR, Clerk



Cape May County Document Summary Sheet

CAPE MAY COUNTY CLERK
PO BOX 5000
7 NORTH MAIN STREET
CAPE MAY COURT HOUSE NJ 08210

INSTRUMENT NUMBER 2022032462
RECORDED COUNTY OF CAPE MAY
RITA M. ROTHBERG, COUNTY CLERK
RECORDING FEE \$95.00
RTF \$1,169.00
RECORDED 10/26/2022 12:29:57

Official Use Only

Transaction Identification Number		6389043	7756705
Submission Date(mm/dd/yyyy)	10/26/2022	Return Address (for recorded documents) TRIDENT LAND TRANSFER COMPANY (NJ) LLC 7000 LINCOLN E DR STE 105 MARLTON, NJ 08053	
No. of Pages (excluding Summary Sheet)	6		
Recording Fee (excluding transfer tax)	\$95.00		
Realty Transfer Tax	\$1,169.00		
Total Amount	\$1,264.00		
Document Type	DEED/NO EXEMPTION FROM REALTY TRANSFER FEE		
Municipal Codes			
UPPER TOWNSHIP		11	
Batch Type	L2 - LEVEL 2 (WITH IMAGES)		
232511			

Additional Information (Official Use Only)

*** DO NOT REMOVE THIS PAGE.**
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RETAIN THIS PAGE FOR FUTURE REFERENCE.



Cape May County Document Summary Sheet

DEED/NO
EXEMPTION
FROM REALTY
TRANSFER FEE

Type	DEED/NO EXEMPTION FROM REALTY TRANSFER FEE				
Consideration	\$229,900.00				
Submitted By	SIMPLIFILE, LLC. (SIMPLIFILE)				
Document Date	09/30/2022				
Reference Info					
Book ID	Book	Beginning Page	Instrument No.	Recorded/File Date	
GRANTOR	Name			Address	
	CHRISTOPHER M DARE			15 TOWNSEND ROAD, MARMORA, NJ 08223	
GRANTEE	Name			Address	
	HEATHER TAMAN			101 E CARDINAL ROAD, WILDWOOD CREST, NJ 08260	
Parcel Info					
Property Type	Tax Dist.	Block	Lot	Qualifier	Municipality
	11	612	3 AND 4		11

*** DO NOT REMOVE THIS PAGE.**
COVER SHEET [DOCUMENT SUMMARY FORM] IS PART OF CAPE MAY COUNTY FILING RECORD.
RETAIN THIS PAGE FOR FUTURE REFERENCE.

updated February 2015

①

Prepared By: Angela Galante, Triad Associates

APPENDIX A

J# 22N-102392

CHARGE, RECORD RETURN MANDATORY DEED FORM FOR OWNERSHIP UNITS
 TRIDENT LAND TRANSFER CO, NJ
 7000 LINCOLN DRIVE EAST
 SUITE 105
 MARLTON, NJ 08053

Deed

**DEED-RESTRICTED AFFORDABLE HOUSING UNIT WITH
 RESTRICTIONS ON RESALE AND REFINANCING**

**To State Regulated Property
 With Covenants Restricting Conveyance
 And Mortgage Debt**

THIS DEED is made on this the 30th day of September, 2022 by and between

Christopher ^MDare, 15 Townsend Road, Marmora, NJ 08223 (Grantor) and Heather Taman, 101 E. Cardinal Road, Wildwood Crest, NJ 08260 (Grantee).

Article 1. Consideration and Conveyance

In return for payment to the Grantor by the Grantee of Ninety-Nine Thousand Nine Hundred Seventy-Five Dollars (\$99,975.00) the (Affordable Sales Price) in addition to One Hundred Twenty-Four Thousand Four Hundred Twenty-Five Dollars (\$124,425.00) from an Affordable Housing Subsidy Payment from the Township of Upper and Five-Thousand Five-Hundred Dollars (\$5,500.00) an Affordability Assistance Payment from the Township of Upper for a total Consideration of Two Hundred Twenty-Nine Thousand Nine Hundred Dollars (\$229,900.00), the receipt of which is hereby acknowledged by the Grantor, the Grantor hereby grants and conveys to the Grantee all of the land and improvements thereon as is more specifically described in Article 2, hereof (the Property).

Article 2. Description of Property

The Property consists of all of the land, and improvements thereon, that is located in the municipality of Upper, County of Cape May State of New Jersey, and described more specifically as Block No. 612 Lot No. 3, and known by the street address:

and Lot 4

15 Townsend Road

Marmora, NJ 08223

1 Bedroom, Moderate Income

GIT/REP-3
(2-21)

State of New Jersey

Seller's Residency Certification/Exemption

(Print or type)

Seller's Information

Name(s)

Christopher M. Dare

Current Street Address:

15 Townsend Road

City, Town, Post Office Box

Marmora

State

New Jersey

ZIP Code

08223

Property Information

Block(s)

612

Lot(s)

3 and 4

Qualifier

Street Address:

15 Townsend Road

City, Town, Post Office

Marmora

State

New Jersey

ZIP Code

08223

Seller's Percentage of Ownership

100.00%

Total Consideration

\$229,900.00

Owner's Share of Consideration

\$229,900.00

Closing Date

September 30, 2022

Seller's Assurances (Check the Appropriate Box) (Boxes 2 through 16 apply to Residents and Nonresidents)

1. ☐ Seller is a resident taxpayer (individual, estate, or trust) of the State of New Jersey pursuant to the New Jersey Gross Income Tax Act, will file a resident Gross Income Tax return, and will pay any applicable taxes on any gain or income from the disposition of this property.
2. ☒ The real property sold or transferred is used exclusively as a principal residence as defined in 26 U.S. Code section 121.
3. ☐ Seller is a mortgagor conveying the mortgaged property to a mortgagee in foreclosure or in a transfer in lieu of foreclosure with no additional consideration.
4. ☐ Seller, transferor, or transferee is an agency or authority of the United States of America, an agency or authority of the State of New Jersey, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or a private mortgage insurance company.
5. ☐ Seller is not an individual, estate, or trust and is not required to make an estimated Gross Income Tax payment.
6. ☐ The total consideration for the property is \$1,000 or less so the seller is not required to make an estimated Income Tax payment.
7. ☐ The gain from the sale is not recognized for federal income tax purposes under 26 U.S. Code section 721, 1031, or 1033 (CIRCLE THE APPLICABLE SECTION). If the indicated section does not ultimately apply to this transaction, the seller acknowledges the obligation to file a New Jersey Income Tax return for the year of the sale and report the recognized gain.
☐ Seller did not receive non-like kind property.
8. ☐ The real property is being transferred by an executor or administrator of a decedent to a devisee or heir to effect distribution of the decedent's estate in accordance with the provisions of the decedent's will or the intestate laws of this State.
9. ☐ The real property being sold is subject to a short sale instituted by the mortgagee, whereby the seller agreed not to receive any proceeds from the sale and the mortgagee will receive all proceeds paying off an agreed amount of the mortgage.
10. ☐ The deed is dated prior to August 1, 2004, and was not previously recorded.
11. ☐ The real property is being transferred under a relocation company transaction where a trustee of the relocation company buys the property from the seller and then sells the house to a third party buyer for the same price.
12. ☐ The real property is being transferred between spouses or incident to a divorce decree or property settlement agreement under 26 U.S. Code section 1041.
13. ☐ The property transferred is a cemetery plot.
14. ☐ The seller is not receiving net proceeds from the sale. Net proceeds from the sale means the net amount due to the seller on the settlement sheet.
15. ☐ The seller is a retirement trust that received an acknowledgment letter from the Internal Revenue Service that the seller is a retirement trust, and is therefore not required to make the estimated Gross Income Tax payment.
16. ☐ The seller (and/or spouse/civil union partner) originally purchased the property while a resident of New Jersey as a member of the U.S. Armed Forces and is now selling the property as a result of being deployed on active duty outside of New Jersey. (Only check this box if applicable and neither boxes 1 nor 2 apply.)

Seller's Declaration

The undersigned understands that this declaration and its contents may be disclosed or provided to the New Jersey Division of Taxation and that any false statement contained herein may be punished by fine, imprisonment, or both. I furthermore declare that I have examined this declaration and, to the best of my knowledge and belief, it is true, correct and complete. By checking this box ☐ I certify that a Power of Attorney to represent the seller(s) has been previously recorded or is being recorded simultaneously with the deed to which this form is attached.

09/30/2022

Date



Signature (Seller)

Indicate if Power of Attorney or Attorney in Fact

Date

Signature (Seller)

Indicate if Power of Attorney or Attorney in Fact